

**UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF
TEXAS, DALLAS DIVISION**

In Re: Highland Capital Management, L.P § Case No. **19-34054-SGJ11**

Charitable DAF Fund, L.P et al

Appellant

§

vs.

§

21-03067

Highland Capital Management, L.P

§

Appellee

§

3:23-CV-01503-B

[167] Order granting Defendant Highland Capital Management, L.P.'s Renewed motion to dismiss adversary proceeding (related document # [122](#)) Entered on 6/25/2023.

Volume 11

APPELLANT RECORD

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and CLO Holdco, Ltd.*

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:	§ Chapter 11
	§
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§ Case No. 19-34054-sgj11
	§
Debtor.	§
	§
CHARITABLE DAF FUND, L.P. AND CLO	§
HOLDCO, LTD., DIRECTLY AND DERIVATIVELY	§
	§
Plaintiffs,	§ Adversary Proceeding No.
	§
vs.	§ 21-03067-sgj11
	§
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§
HIGHLAND HCF ADVISOR, LTD., AND	§
HIGHLAND CLO FUNDING LTD., NOMINALLY	§
	§
Defendant.	§
	§

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**APPELLANTS' SECOND AMENDED STATEMENT OF ISSUES
AND DESIGNATION OF RECORD ON APPEAL**

Pursuant to Rules 8009(a)(1)(A)-(B) and (a)(4) of the Federal Rules of Bankruptcy Procedure, The Charitable DAF Fund, L.P. and CLO Holdco, Ltd. ("Appellants") hereby designate the following items to be included in the record and identify the following issues with respect to

their appeal of the Order Granting Defendant Highland Capital Management, L.P.'s "Renewed Motion to Dismiss Complaint" [Adv. Proc. Doc. No. 122] which was entered by the United States Bankruptcy Court for the Northern District of Texas on June 25, 2023.

I. STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL

- Whether the Bankruptcy Court had jurisdiction to rule on Highland Capital Management L.P.'s Renewed Motion to Dismiss Complaint
- Whether the Renewed Motion to Dismiss Complaint was improperly granted

II. DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD

Vol. 1
000001

1. Notice of Appeal for Bankruptcy Case Adversary Proceeding No. 21-03067-sgj11 [Doc. 168].

000042

2. The judgment, order, or decree appealed from: Memorandum Opinion and Order Granting Defendant Highland Capital Management, L.P.'s "Renewed Motion to Dismiss Complaint" [Adv. Proc. Doc. No. 122] [Doc. 167].

000080

3. Docket Sheet kept by the Bankruptcy Clerk.

4. Documents listed below and as described in the Docket Sheet for Bankruptcy Case Proceeding No. 21-03067-sgj.

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No.	Date Filed	Docket No.	Description/Document Text
1	9/29/21	1	(36 pgs; 3 docs) Adversary case 21-03067. ORDER REFERRING CASE NUMBER 21-CV-0842-B from U.S District Court for the Northern District of Texas, Dallas Division to U.S. Bankruptcy Court for Northern District of Texas, Dallas Division. Complaint by Charitable DAF Fund, LP, CLO Holdco, Ltd. against Highland Capital Management, LP, Highland HCF Advisor Ltd., Highland CLO Funding, Ltd. Fee Amount \$350 (Attachments: # 1 Original Complaint # 2 Docket Sheet from 3:20-cv-0842-B) Nature(s) of suit: 02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy)). (Okafor, M.)
2	9/29/21	2	(1 pg) Supplemental Document (cover sheet) by CLO Holdco Ltd., Charitable DAF Fund (RE: related document(s)1 Adversary case 21-03067) [ORIGINALLY FILED IN 21-CV-0842 AS #2 ON 04/13/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, M.)

Vol. 2 000139 000232 000239 000270 Thru Vol. 6	3	9/29/21	6	(93 pgs; 6 docs) MOTION for Leave to File First Amended Complaint filed by CLO Holdco Ltd., Charitable DAF Fund LP (Attachments: # 1 Exh 1_First Amended Complaint # 2 Exh 2_Motion for Authorization to Retain James Seery # 3 Exh 3_Order Approving Retention of James Seery # 4 Exh 4_Order Approving Settlement # 5 Proposed Order) (Bridges, Jonathan) (Entered: 04/19/2021) [ORIGINALLY FILED IN 21-CV-0842 AS #6 ON 04/19/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, M.)
	4	9/29/21	22	(7 pgs; 2 docs) MOTION for an Order to Enforce the Order of Reference filed by Highland Capital Management LP. (Attachments: # 1 Exhibit(s) A--Proposed Order) (Annable, Zachery) Modified text on 5/20/2021 (mjr). (Entered: 05/19/2021) [ORIGINALLY FILED IN 21-CV-0842 AS #22 ON 05/19/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, M.)
	5	9/29/21	23	(31 pgs) Brief/Memorandum in Support filed by Highland Capital Management LP re: 22 MOTION for an Order to Enforce the Order of Reference. (Annable, Zachery) Modified text on 5/20/2021 (mjr).(Entered: 05/19/2021) [ORIGINALLY FILED IN 21-CV-0842 AS #23 ON 05/19/2021 IN U.S.DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, M.)
	6	9/29/21	24	(926 pgs; 29 docs) Appendix in Support filed by Highland Capital Management LP re: 23 Brief/Memorandum in Support. (Attachments: # 1 Appendix 1 # 2 Appendix 2 # 3 Appendix 3 # 4 Appendix 4 # 5 Appendix 5 # 6 Appendix 6 # 7 Appendix 7 # 8 Appendix 8 # 9 Appendix 9 # 10 Appendix10 # 11 Appendix 11 # 12 Appendix 12 # 13 Appendix 13 # 14 Appendix 14 # 15 Appendix 15 # 16 Appendix 16 # 17 Appendix 17 # 18 Appendix 18 # 19 Appendix 19 # 20 Appendix 20 # 21 Appendix 21# 22 Appendix 22 # 23 Appendix 23 # 24 Appendix 24 # 25 Appendix 25 # 26 Appendix 26 # 27 Appendix 27 # 28 Appendix 28) (Annable, Zachery) Modified linkage and text on 5/20/2021 (mjr). (Entered:05/19/2021) [ORIGINALLY FILED IN 21-CV-0842 AS #24 ON 05/19/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, M.)
Vol. 7 001196	7	9/29/21	26	(7 pgs; 2 docs) MOTION to Dismiss Complaint filed by Highland Capital Management LP (Attachments: # 1 Exhibit(s) A--Proposed Order) (Annable, Zachery) Modified text on 5/28/2021 (jmg).(Entered: 05/27/2021) [ORIGINALLY FILED IN 21-CV-0842 AS #26 ON 05/27/2021 IN U.S.DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, M.)

Vol. 7 001203 thru Vol. 8	8	9/29/21	28	(508 pgs; 14 docs) Appendix in Support filed by Highland Capital Management LP (Attachments: # 1 Appendix 1 # 2 Appendix 2 # 3 Appendix 3 # 4 Appendix 4 # 5 Appendix 5 # 6 Appendix 6 # 7 Appendix 7 # 8 Appendix 8 # 9 Appendix 9 # 10 Appendix 10 # 11 Appendix 11 # 12 Appendix 12 # 13 Appendix 13) (Annable, Zachery) (Entered: 05/27/2021) [ORIGINALLY FILED IN 21-CV-0842 AS #28 ON 05/27/2021 IN U.S. DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, M.)
Vol. 9 001711	9	9/29/21	33	(1 pg) Amended Civil Cover Sheet by CLO Holdco Ltd, Charitable DAF Fund LP. Amendment to 2 Supplemental Document. (Sbaiti, Mazin) Modified text on 6/23/2021 (mjr). (Entered: 06/22/2021) [ORIGINALLY FILED IN 21-CV-0842 AS #33 ON 06/22/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, M.)
001712	10	9/29/21	36	(26 pgs) RESPONSE filed by CLO Holdco Ltd, Charitable DAF Fund LP re: 22 MOTION for an Order to Enforce the Order of Reference (Sbaiti, Mazin) (Entered: 06/29/2021) [ORIGINALLY FILED IN 21-CV-0842 AS #36 ON 06/29/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, M.)
001738	11	9/29/21	37	(22 pgs) Appendix in Support filed by CLO Holdco Ltd, Charitable DAF Fund LP re 36 Response/Objection Response to Motion for an Order to Enforce the Order of Reference (Sbaiti, Mazin) (Entered: 06/29/2021) [ORIGINALLY FILED IN 21-CV-0842 AS #37 ON 06/29/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, M.)
001760	12	9/29/21	38	(45 pgs) RESPONSE filed by CLO Holdco Ltd, Charitable DAF Fund LP re: 26 MOTION to Dismiss (Defendant Highland Capital Management, L.P.'s Motion to Dismiss Complaint) (Sbaiti, Mazin) (Entered: 06/29/2021) [ORIGINALLY FILED IN 21-CV-0842 AS #38 ON 06/29/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, M.)
001805	13	9/29/21	39	(88 pgs) Appendix in Support filed by CLO Holdco Ltd, Charitable DAF Fund LP re 38 Response/Objection to Defendant Highland Capital Management, L.P.'s Motion to Dismiss Complaint (Sbaiti, Mazin) (Entered: 06/29/2021) [ORIGINALLY FILED IN 21-CV-0842 AS #39 ON 06/29/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, M.)
001893	14	9/29/21	42	(12 pgs) REPLY filed by Highland Capital Management LP re: 22 MOTION for an Order to Enforce the Order of Reference (Annable, Zachery) (Entered: 07/13/2021) [ORIGINALLY FILED IN 21-CV-0842AS #42 ON 07/13/2021 IN U.S.

			DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, M.)
VOL. 9	15	9/29/21	43 (852 pgs) Appendix in Support filed by Highland Capital Management LP re: 42 Reply. (Annable, Zachery) Modified text on 7/14/2021 (mjr). (Entered: 07/13/2021) [ORIGINALLY FILED IN 21-CV-0842AS #43 ON 07/13/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, M.)
001905 thru Vol. 13	16	9/29/21	45 (21 pgs) REPLY filed by Highland Capital Management LP re: 26 MOTION to Dismiss (Defendant Highland Capital Management, L.P.'s Motion to Dismiss Complaint) (Annable, Zachery) (Entered: 07/13/2021) [ORIGINALLY FILED IN 21-CV-0842 AS #44 ON 07/13/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, M.)
002757	17	9/29/21	57 (7 pgs; 2 docs) MOTION to Dismiss and Joinder in Motion to Dismiss of Highland Capital Management, L.P. filed by Highland CLO Funding Ltd. (Attachments: # 1 Proposed Order) Attorney Paul R Bessette added to party Highland CLO Funding Ltd (pty:dft) (Bessette, Paul) (Entered: 08/30/2021) [ORIGINALLY FILED IN 21-CV-0842 AS #57 ON 08/30/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, M.)
002778	18	9/29/23	58 (12 pgs) Brief/Memorandum in Support filed by Highland CLO Funding Ltd. re 57 MOTION to Dismiss and Joinder in Motion to Dismiss of Highland Capital Management, L.P. (Bessette, Paul) (Entered: 08/30/2021) [ORIGINALLY FILED IN 21-CV-0842 AS #58 ON 08/30/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, M.)
002785	19	9/29/23	59 (80 pgs; 5 docs) Appendix in Support filed by Highland CLO Funding Ltd re 58 Brief/Memorandum in Support of Motion (Attachments: # 1 Exhibit(s) A - Jackson v Dear # 2 Exhibit(s) B - Prudential Assurance v. Newman # 3 Exhibit(s) C - Harbourvest Settlement Agreement # 4 Exhibit(s) D - Boleat Declaration) (Bessette, Paul) (Entered: 08/30/2021) [ORIGINALLY FILED IN 21-CV-0842 AS #59 ON 08/30/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, M.)
002797	20	9/29/21	64 (1 pg) ORDER OF REFERENCE: Pursuant to 28 U.S.C. § 157 and this District's Miscellaneous Order No. 33, this case is hereby REFERRED to Judge Stacey G. C. Jernigan of the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, to be adjudicated as a matter related to the consolidated Chapter 11 Bankruptcy of Highland Capital Management, L.P., Chapter 11 Case No.19-34054. (Ordered by Judge Jane J. Boyle
002877			

Vol. 14 002878 002883 thru Vol. 16				on 9/20/2021) (svc) (Entered: 09/20/2021) [ORIGINALLY FILED IN 21-CV-0842 AS #64 ON 09/20/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, M.)
	21	10/19/21	66	(5 pgs) Notice of hearing filed by Defendant Highland Capital Management, LP (RE: related document(s) 26 Motion to dismiss adversary proceeding filed by Defendant Highland Capital Management, LP, 47 Motion to strike document filed by Plaintiff Charitable DAF Fund, LP, Plaintiff CLO Holdco, Ltd., 55 Motion to abate filed by Plaintiff Charitable DAF Fund, LP, Plaintiff CLO Holdco, Ltd.) Hearing to be held on 11/23/2021 at 09:30 AM at https://us-courts.webex.com/meet/jerniga for 26 and for 47 and for 55, (Annable, Zachery)
	22	11/22/21	71	(509 pgs; 2 docs) Witness and Exhibit List <i>for Hearing on November 23, 2021</i> filed by Defendant Highland Capital Management, LP (RE: related document(s) 26 Motion to dismiss adversary proceeding). (Attachments: # 1 Exhibits 1-13) (Hayward, Melissa)
Vol. 17 003392 003394 003583 003585 003611	23	11/22/21	72	(2 pgs) Witness List filed by Plaintiffs CLO Holdco, Ltd., Charitable DAF Fund, LP (RE: related document(s) 26 Motion to dismiss adversary proceeding, 47 Motion to strike (related document(s): 43 Document), 55 Motion to abate (related document(s) 1 Complaint), 69 Motion to abate <i>Plaintiffs' Amended Motion to Stay All Proceedings</i> (related document(s) 55 Motion to abate (related document(s) 1 Complaint))). (Sbaiti, Mazin)
	24	11/22/21	73	(189 pgs; 4 docs) Exhibit List <i>for November 23, 2021 hearing</i> filed by Plaintiffs CLO Holdco, Ltd., Charitable DAF Fund, LP (RE: related document(s) 47 Motion to strike (related document(s): 43 Document), 55 Motion to abate (related document(s) 1 Complaint)). (Attachments: # 1 Exhibit 1_Defendant's Memorandum of Law in Support of Motion for Reconsideration # 2 Exhibit 2_Highland Memorandum in Support of Motion to Dismiss # 3 Exhibit 3_Order (I) Confirming Fifth Amended Plan of Reorganization of Highland) (Sbaiti, Mazin)
	25	12/7/21	80	(2 pgs) Order granting Highland CLO Funding, Ltd.'s motion to dismiss adversary as a party with prejudice (related document 57) Entered on 12/7/2021. (Okafor, Marcey) Modified text on 3/11/2022 (Okafor, Marcey).
	26	3/11/22	99	(26 pgs) Memorandum of Opinion and order granting motion to dismiss the adversary proceeding (RE: related document(s) 26 Motion to dismiss adversary proceeding filed by Defendant Highland Capital Management, LP). Entered on 3/11/2022 (Okafor, Marcey)
	27	3/11/22	100	(26 pgs) Order granting motion to dismiss adversary proceeding with prejudice (related document #26) Entered on 3/11/2022. (Okafor, Marcey)

Vol. 18 003637	28	3/21/22	104	(29 pgs) Notice of appeal. Fee Amount \$298 filed by Plaintiffs CLO Holdco, Ltd., Charitable DAF Fund, LP (RE: related document(s) 100 Order on motion to dismiss adversary proceeding). Appellant Designation due by 04/4/2022. (Sbaiti, Mazin)
003666	29	5/26/22	120	(177 pgs; 2 docs) Support/supplemental document <i>Motion to Supplement Appellate Record</i> filed by Plaintiffs CLO Holdco, Ltd., Charitable DAF Fund, LP (RE: related document(s) 111 Appellant designation). (Attachments: # 1 Amended Transcript of January 14, 2021 Hearing) (Sbaiti, Mazin)
003843	30	6/9/22	121	(1 pg) DISTRICT COURT Order: Case 3:22-00695-B is hereby transferred to the docket of the Honorable Judge Jane J. Boyle for consolidation with The Charitable DAF Fund LP, et al. v. Highland Capital Management LP, Case No. 3:21-cv-3129-N. Judge Karen Gren Scholer no longer assigned to case.(RE: related document(s) 86 Notice of appeal filed by Plaintiff Charitable DAF Fund, LP, Plaintiff CLO Holdco, Ltd., 104 Notice of appeal filed by Plaintiff Charitable DAF Fund, LP, Plaintiff CLO Holdco, Ltd.). Entered on 6/9/2022 (Whitaker, Sheniqua) (Entered: 06/10/2022)
003844	31	10/24/22	122	(7 pgs) Motion to dismiss adversary proceeding (<i>Defendant Highland Capital Management, L.P.'s Renewed Motion to Dismiss Complaint</i>) filed by Defendant Highland Capital Management, LP (Annable, Zachery)
003851	32	10/14/22	123	(31 pgs) Brief in support filed by Defendant Highland Capital Management, LP (RE: related document(s) 122 Motion to dismiss adversary proceeding (<i>Defendant Highland Capital Management, L.P.'s Renewed Motion to Dismiss Complaint</i>)). (Annable, Zachery)
Vol. 19 003882 Thru Vol 20	33	10/14/22	124	(513 pgs; 15 docs) Support/supplemental document (<i>Appendix in Support of Defendant Highland Capital Management, L.P.'s Renewed Motion to Dismiss Complaint</i>) filed by Defendant Highland Capital Management, LP (RE: related document(s) 122 Motion to dismiss adversary proceeding (<i>Defendant Highland Capital Management, L.P.'s Renewed Motion to Dismiss Complaint</i>)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14) (Annable, Zachery)
Vol. 21 004395	34	10/27/22	126	(5 pgs) Notice of hearing (<i>Notice of Hearing and Briefing Schedule on Defendant Highland Capital Management, L.P.'s Renewed Motion to Dismiss Complaint</i>) filed by Defendant Highland Capital Management, LP (RE: related document(s) 122 Motion to dismiss adversary proceeding filed by Defendant Highland Capital Management, LP). Hearing to be held on 12/8/2022 at 09:30 AM at https://us-courts.webex.com/meet/jerniga for 122. (Annable, Zachery)

Vol. 21 004400 004410 004442 Thru Vol. 22	35	11/18/22	128	(10 pgs) Motion for withdrawal of reference. Fee amount \$188, filed by Plaintiffs CLO Holdco, Ltd., Charitable DAF Fund, LP (Sbaiti, Mazin)
	36	11/18/22	129	(32 pgs) Response opposed to (related document(s): 122 Motion to dismiss adversary proceeding (<i>Defendant Highland Capital Management, L.P.'s Renewed Motion to Dismiss Complaint</i>) filed by Defendant Highland Capital Management, LP) filed by Plaintiffs CLO Holdco, Ltd., Charitable DAF Fund, LP. (Sbaiti, Mazin)
	37	11/18/22	130	(254 pgs; 2 docs) Response opposed to (related document(s): 122 Motion to dismiss adversary proceeding (<i>Defendant Highland Capital Management, L.P.'s Renewed Motion to Dismiss Complaint</i>) filed by Defendant Highland Capital Management, LP) filed by Plaintiffs CLO Holdco, Ltd., Charitable DAF Fund, LP. (Attachments: # 1 Appendix) (Sbaiti, Mazin)
Vol. 22 004696 004717 004732 004737 004742	38	9/2/22	131	(21 pgs) DISTRICT COURT MEMORANDUM OPINION AND ORDER: The Court REVERSES and REMANDS the bankruptcy court's Motion to Dismiss Order and AFFIRMS the bankruptcy courts Motion to Stay Order. re: appeal on Civil Action number: Case 3:22-00695-B consolidated with 3:21-CV-3129-B, (RE: related document(s) 81 Order on motion to abate, 100 Order on motion to dismiss adversary proceeding). Entered on 9/2/2022 (Whitaker, Sheniqua) (Entered: 11/29/2022)
	39	12/2/22	133	(15 pgs) Reply to (related document(s): 129 Response filed by Plaintiff Charitable DAF Fund, LP, Plaintiff CLO Holdco, Ltd., 130 Response filed by Plaintiff Charitable DAF Fund, LP, Plaintiff CLO Holdco, Ltd.) filed by Defendant Highland Capital Management, LP. (Annable, Zachery)
	40	12/7/22	135	(5 pgs) Notice of hearing filed by Defendant Highland Capital Management, LP (RE: related document(s) 122 Motion to dismiss adversary proceeding filed by Defendant Highland Capital Management, LP). Hearing to be held on 1/25/2023 at 01:30 PM at https://us-courts.webex.com/meet/jerniga for 122, (Annable, Zachery)
	41	12/7/22	136	(5 pgs) Notice of hearing filed by Defendant Highland Capital Management, LP (RE: related document(s) 128 Motion for withdrawal of reference filed by Plaintiff Charitable DAF Fund, LP, Plaintiff CLO Holdco, Ltd.). Status Conference to be held on 1/25/2023 at 01:30 PM at https://us-courts.webex.com/meet/jerniga . (Annable, Zachery).
	42	12/9/22	138	(3 pgs) Response opposed to (related document(s): 128 Motion for withdrawal of reference. Fee amount \$188, filed by Plaintiff Charitable DAF Fund, LP, Plaintiff CLO Holdco, Ltd.) filed by Defendant Highland Capital Management, LP. (Annable, Zachery)

Vol. 22 004745	43	12/9/22	139	(25 pgs) Brief in support filed by Defendant Highland Capital Management, LP (RE: related document(s) 138 Response). (Annable, Zachery)
Vol. 23 004770	44	12/9/22	140	(280 pgs; 8 docs) Support/supplemental document (<i>Appendix in Support of Highland Capital Management, L.P.'s Response to Renewed Motion to Withdraw the Reference</i>) filed by Defendant Highland Capital Management, LP (RE: related document(s) 138 Response). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7) (Annable, Zachery)
Vol. 24 005050	45	12/16/22	144	(6 pgs) Reply to (related document(s): 138 Response filed by Defendant Highland Capital Management, LP) filed by Plaintiffs CLO Holdco, Ltd., Charitable DAF Fund, LP. (Sbaiti, Mazin)
005056 Thru Vol. 25.	46	1/23/23	145	(514 pgs; 15 docs) Witness and Exhibit List filed by Defendant Highland Capital Management, LP (RE: related document(s) 122 Motion to dismiss adversary proceeding (<i>Defendant Highland Capital Management, L.P.'s Renewed Motion to Dismiss Complaint</i>)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14) (Annable, Zachery)
Vol. 26 005570	47	1/23/23	146	(280 pgs; 8 docs) Witness and Exhibit List filed by Defendant Highland Capital Management, LP (RE: related document(s) 128 Motion for withdrawal of reference. Fee amount \$188.). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7) (Annable, Zachery)
Vol. 27 005850	48	1/23/23	147	(221 pgs; 7 docs) Witness and Exhibit List filed by Plaintiffs CLO Holdco, Ltd., Charitable DAF Fund, LP (RE: related document(s) 122 Motion to dismiss adversary proceeding (<i>Defendant Highland Capital Management, L.P.'s Renewed Motion to Dismiss Complaint</i>)). (Attachments: # 1 Exhibit 1_Excerpts from July 14, 2020 Hearing Transcript # 2 Exhibit 2_HCLOF Members Agreement Relating to the Company # 3 Exhibit 3_HarbourVest Settlement Agreement # 4 Exhibit 4_Order Approving Debtor's Settlement with HarbourVest # 5 Exhibit 5_HCLOF Offering # 6 Exhibit 6 Amended and Restated Investment Advisory Agreement) (Sbaiti, Mazin)
006071	49	1/23/23	148	(3 pgs) Witness and Exhibit List filed by Plaintiffs CLO Holdco, Ltd., Charitable DAF Fund, LP (RE: related document(s) 128 Motion for withdrawal of reference. Fee amount \$188.). (Phillips, Louis)
Vol. 28 006074	50	1/25/23	150	(56 pgs; 2 docs) Amended Witness and Exhibit List filed by Plaintiffs CLO Holdco, Ltd., Charitable DAF Fund, LP (RE: related document(s) 147 List (witness/exhibit/generic), 149 List (witness/exhibit/generic)). (Attachments: # 1 Exh 7_Testimony of Mark Patrick at June 8, 2021 hearing) (Sbaiti, Mazin)

Vol. 28 006130	51	1/25/23	152	(3 pgs) Notice of Appearance and Request for Notice by Louis M. Phillips filed by Plaintiffs CLO Holdco, Ltd., Charitable DAF Fund, LP. (Phillips, Louis)
	52	1/25/23	154	(1 pg) Court admitted exhibits date of hearing January 25, 2023 (RE: related document(s) 128 Motion for withdrawal of reference, filed by Plaintiffs CLO Holdco, Ltd., Charitable DAF Fund, LP filed by Plaintiff Charitable DAF Fund, LP, Plaintiff CLO Holdco, Ltd.) (COURT ADMITTED DEFENDANT'S EXHIBITS #1, #2, #3, #4, #5 & #6 OFFERED BY ATTY GREG DEMO). (Edmond, Michael) (Entered: 01/27/2023)
Vol. 32 006925 006942 006960	53	2/6/23	158	Report and recommendation to the U.S. District Court by U.S. Bankruptcy Judge. (RE: related document(s) 128 Motion for withdrawal of reference filed by Plaintiff Charitable DAF Fund, LP, Plaintiff CLO Holdco, Ltd.). Entered on 2/6/2023 (Okafor, Marcey)
	54	2/6/23	161	(18 pgs) DISTRICT COURT Notice of transmission of report and recommendation in re: renewed motion to withdraw reference. Civil Case # 3:22-cv-02802-S. (RE: related document(s) 158 Report and recommendation to the U.S. District Court by U.S. Bankruptcy Judge. (RE: related document(s) 128 Motion for withdrawal of reference filed by Plaintiff Charitable DAF Fund, LP, Plaintiff CLO Holdco, Ltd.). Entered on 2/6/2023) (Whitaker, Sheniqua)
	55	4/3/23	165	(1 pg) DISTRICT COURT ORDER: The Court GRANTS the 11 Joint Motion to Transfer Proceeding and Consolidate Before Original Court and the above-numbered case (3:22-cv-02802-S) is transferred to the docket of the Honorable Judge Jane Boyle: Civil case 3:21-cv-00842-B (order referring case). (RE: related document(s) 1 Complaint filed by Plaintiff Charitable DAF Fund, LP, Plaintiff CLO Holdco, Ltd., 143 Notice of transmission of motion to withdraw reference). Entered on 4/3/2023 (Whitaker, Sheniqua) Modified on 4/10/2023 (Whitaker, Sheniqua). (Entered: 04/10/2023)

TRANSCRIPTS

006961	56	11/24/21	78	(104 pgs) Transcript regarding Hearing Held 11-23-2021 RE: Motion Hearing. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 02/22/2022. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Liberty Transcripts/Dipti Patel, Telephone number 847-848-4907. (RE: related document(s) 75 Hearing held on 11/23/2021. (RE: related document(s) 55 MOTION to Stay filed by CLO Holdco Ltd, Charitable DAF Fund LP (Sbaiti, Mazin) (Entered: 08/26/2021) [ORIGINALLY FILED IN 21-CV-0842 AS #55 ON 08/26/2021 IN U.S.
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			<p>DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, M.)) (Appearances: J. Pomerantz and J. Morris for Highland Defendants; J. Jordan and P. Bessett for HCLOF; M. Sbaiti for Plaintiffs. Nonevidentiary hearing. Motion denied. Mr. Pomerantz to upload order.), 76 Hearing held on 11/23/2021. (RE: related document(s) 47 Motion to strike 43 Appendix in support filed by CLO Holdco, Ltd., Charitable DAF Fund, LP (Bridges, Jonathan) Modified text on 7/16/2021 (mjr). (Entered: 07/15/2021) [ORIGINALLY FILED IN 21-CV-0842 AS #47 ON 07/15/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, M.)) (Appearances: J. Pomerantz and J. Morris for Highland Defendants; J. Jordan and P. Bessett for HCLOF; M. Sbaiti for Plaintiffs. Nonevidentiary hearing. Motion denied (Plaintiffs acknowledged complained-of Appendices it did not relate to Motion to Dismiss). Mr. Pomerantz to upload order.)). Transcript to be made available to the public on 02/22/2022. (Patel, Dipti)</p>
57	2/21/23	164	<p>164 (112 pgs) Transcript regarding Hearing Held 1/25/23 RE: HEARING ON DEFENDANT HIGHLAND CAPITAL MANAGEMENT L.P.'S RENEWED MOTION TO DISMISS COMPLAINT (122) AND STATUS CONFERENCE RE: MOTION FOR WITHDRAWAL OF REFERENCE FILED BY PLAINTIFF CLO HOLDCO, LTD., PLAINTIFF CHARITABLE DAF FUND, LP (128). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 05/22/2023. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Dipti Patel, Telephone number 847-848-4907. (RE: related document(s) 155 Hearing held on 1/25/2023. (RE: related document(s) 122 Motion to dismiss adversary proceeding, (Defendant Highland Capital Management, L.P.'s Renewed Motion to Dismiss Complaint) filed by Defendant Highland Capital Management, LP filed by Defendant Highland Capital Management, LP) (Appearances: J. Morris and G. Demo for Movants; L. Phillips and M. Sbaiti for Plaintiffs. Evidentiary hearing (appendices). Court took matter under advisement.), 156 Hearing held on 1/25/2023. (RE: related document(s) 128 Motion for withdrawal of reference. Fee amount \$188, filed by Plaintiffs CLO Holdco, Ltd., Charitable DAF Fund, LP filed by Plaintiff Charitable DAF Fund, LP, Plaintiff CLO Holdco, Ltd.) (Appearances: J. Morris and G. Demo for Movants; L. Phillips and M. Sbaiti for Plaintiffs. Evidentiary hearing (appendices). Court announced it will recommend denial to District Court. Court is working on Report & Recommendation.)). Transcript to be made available to the public on 05/22/2023. (Patel, Dipti)</p>

Dated: July 14, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was filed electronically through the Court's ECF system, which provides notice to all parties of interest, on this 14th day of July, 2023.

/s/ Mazin A. Sbaiti

Mazin A. Sbaiti

1 A Yes.

2 Q If Mr. Patrick decides tomorrow to withdraw the lawsuit
3 that's in District Court, does he have an the obligation to
4 tell you in advance?

5 A Again, I wouldn't use the word obligation. But something
6 that I think ultimately is going to be a \$20 or \$30 million,
7 if not more, benefit to the DAF, to the detriment of Highland,
8 if you were to give that up, I would expect him to have a
9 rationale and I would expect him to get other people's
10 thoughts and opinions before he did that.

11 Q Okay. But does he have to get your opinion before he
12 acts?

13 A No, he does not.

14 Q Okay. So he -- Mr. Patrick could do that tomorrow, he
15 could settle the case, and if he doesn't come to you to
16 discuss it in advance, you won't be critical of him, right?

17 A He doesn't have the obligation, but there's -- there's a
18 reasonableness in alignment of interests. I -- a growing
19 entrepreneur sets up a trust, a lot of times they'll put their
20 wife in charge of it, and she hires investment advisers and
21 whatever, but they've got the best interests at mind for the
22 charity or the children or whatever.

23 You know, people who go rogue and move in their own self-
24 interest or panic, that stuff can happen all the time. It
25 doesn't make it appropriate, though.

1 Q A couple of weeks after Mr. Scott withdraw the objection
2 to the HarbourVest settlement, he entered into a settlement
3 agreement with the Debtor pursuant to which he settled the
4 dispute between the Debtor and CLO Holdco, correct?

5 A Yes.

6 Q Okay. You didn't get advance notice of that third
7 decision, correct?

8 A No.

9 Q Can we go to Page -- Exhibit 32 in your binder? And this
10 is the settlement agreement between CLO Holdco and the Debtor,
11 correct? Attached as the exhibit. I apologize.

12 A Yes.

13 Q And do you understand that that's Mr. Scott's signature on
14 the last page?

15 A Yep.

16 Q And you learned about this settlement only after it had
17 been reached, correct?

18 A Yep.

19 Q And you believed Mr. Scott's decision not to pursue
20 certain claims against the Debtor or to remove HCMLP as the
21 manager of the CLOs was not in the best interests of the DAF,
22 correct?

23 A Correct.

24 Q And you let Mr. Scott know that, correct?

25 A Yes.

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1 Q After learning about the settlement agreement on January
2 26th, you had one or two conversations with Mr. Scott on this
3 topic, correct?

4 A Yes.

5 Q And your message to Mr. Scott was that the compromise or
6 settlement wasn't in the DAF's best interest, correct?

7 A It was horrible for the DAF.

8 Q Uh-huh. And you told him that, right?

9 A Yes.

10 Q Okay. From your perspective, any time a trustee doesn't
11 do what you believe is in the trust's best interest, you leave
12 yourself open to getting sued, correct?

13 A Who is "you" in that question?

14 Q You. Mr. Dondero.

15 A Can you repeat the question, then, please?

16 Q Sure. From your perspective, any time you're a trustee
17 and you don't believe that the trustee is doing what's in the
18 best interests of the fund, the trustee leaves himself open to
19 getting sued, correct?

20 A I don't know who the trustee leaves himself open to, but
21 as soon as you go down a path of self-interest or panic, you
22 -- you potentially create a bad situation. But I don't know
23 who holds who liable.

24 Q Did you believe that Mr. Scott was acting out of self-
25 interest or panic when he decided to settle the dispute with

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1 the Debtor on behalf of CLO Holdco?

2 A Yes.

3 Q Did you tell him that?

4 A He told me that.

5 Q He told you that he was acting out of panic or
6 desperation? With self-int... withdrawn. Withdrawn. Did he
7 tell you that he was acting out of self-interest?

8 A He was having health problems, anxiety problems, and he
9 didn't want to deal with the conflict. He didn't want to
10 testify. He didn't want to come to court. He didn't want to
11 do those things. And I told him I didn't think the settlement
12 was going to get him out of that stuff. I think, you know, it
13 got him out of some issues, but I think you guys are going to
14 go after him for other stuff. But he -- he panicked.

15 MR. MORRIS: I move to strike the latter remark.

16 THE COURT: Sustained.

17 BY MR. MORRIS:

18 Q Shortly after you had the conversation with Mr. Scott, he
19 sent you notice of his intent to resign from his positions at
20 the DAF and CLO Holdco, correct?

21 A Yes.

22 Q Okay. Let's take a look at that, please. Exhibit 29.
23 This is Mr. Scott's notice of resignation, correct?

24 A Yes.

25 Q He sent it only to you, correct?

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1 A Yes.

2 Q A couple of days before he sent this, he told you he was
3 considering resigning; isn't that right?

4 A Yes.

5 Q Okay. And he told you he was considering resigning
6 because he was suffering from health and anxiety issues
7 regarding the confrontation and the challenges of
8 administering the DAF given the bankruptcy, correct?

9 A Yes.

10 Q He didn't tell you that he made the decision -- withdrawn.
11 Did you tell him in this same conversation -- withdrawn. Is
12 this the same conversation where you conveyed the message that
13 the compromise or settlement wasn't in the best interests of
14 the DAF?

15 A You mean the conversation -- or the resignation? Is that
16 -- can you rephrase the question, please?

17 Q Yeah, I apologize. It's my fault, sir. You testified
18 that after the January 26th hearing you had a conversation
19 with Mr. Scott where you told him that the compromise or
20 settlement was not in the best interests of the DAF, correct?

21 A Yes.

22 Q Okay. Did Mr. Scott share with you his concerns about
23 anxiety and health issues in that same conversation, or was it
24 in a subsequent conversation?

25 A It was at or around that time. I -- I don't remember

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1 which conversation.

2 Q Okay.

3 A But it was right at or around that time.

4 Q All right. You never asked Mr. Scott to reconsider, did
5 you?

6 A No.

7 Q You don't recall sending this notice of resignation to
8 anyone, do you?

9 A No.

10 Q You don't remember notifying anyone that you'd received
11 notice of Mr. Scott's intent to resign from the DAF, do you?

12 A It was -- yeah, no, I -- I don't remember. It was a busy
13 time around that time and this was a secondary issue.

14 Q Okay. So the fact that the person who has been running
15 the DAF for a decade gives you and only you notice of his
16 intent to resign was a secondary issue in your mind?

17 A Yes, because when I talked to him at about that time, I
18 said, okay, well, it's going to take a while. I don't even
19 know how the mechanism works. But don't do anything adverse
20 to the DAF, don't do anything else until, you know, you've
21 figured out transition.

22 Q Uh-huh.

23 A And so once he had confirmed he wouldn't do anything
24 outside normal course until he transitioned, I didn't worry
25 about this. I had bigger issues to worry about at the time.

1 Q In the third paragraph of his email to you, he wrote that
2 his resignation will not be effective until he approves of the
3 indemnification provisions and obtains any and all necessary
4 releases. Do you see that?

5 A Yes.

6 Q And that was the condition that on January 31st Mr. Scott
7 placed on the effectiveness of his resignation, correct?

8 A Condition? Yeah, I -- I think he's trying to state the
9 timing will happen after that.

10 Q After he gets the release, right?

11 A Yes.

12 Q And he wanted the release because you'd told him three
13 different times that he wasn't acting in the best of the DAF,
14 correct?

15 MR. TAYLOR: Objection, Your Honor.

16 MR. SBAITI: Objection. Calls for --

17 MR. TAYLOR: Objection. Calls for speculation.

18 THE WITNESS: Yeah, I --

19 THE COURT: Sustained.

20 THE WITNESS: I can't take that jump. Yeah.

21 BY MR. MORRIS:

22 Q In response to this email from your lifelong friend, you
23 responded, if we could scroll up, about whether divest was a
24 synonym -- if we can look at the first one -- whether divest
25 is a synonym for resigned. Do I have that right?

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1 A (no immediate response)

2 Q If you will look at your response on Monday morning at
3 9:50.

4 A Yes.

5 Q Okay. And then after Mr. Scott responds, you respond
6 further, if we can scroll up, and you specifically told him,
7 "You need to tell me ASAP that you have no intent to divest
8 assets." Correct?

9 A Yes.

10 Q And you wrote that because you believed some of his
11 behavior was unpredictable, right?

12 A I think I wrote that because the term divest in investment
13 terms means sale or liquidate, but I guess it had a different
14 legal term in the way he was looking at it. I wasn't aware at
15 that time of the shares that could be bequeathed to anybody,
16 and I think the divest refers to that, but I wasn't aware that
17 that's how the structure worked at that time, and I was
18 worried that divest could be the investment term and I -- it
19 wouldn't have been appropriate for him to liquidate the
20 portfolio.

21 Q So, and you wanted to make sure he wasn't liquidating or
22 intending to liquidate any of the CLOs, correct?

23 A Correct.

24 Q Okay. So he's still the authorized, the sole authorized
25 representative, but you wanted to make sure that he didn't do

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1 anything that you thought was inappropriate. Fair?

2 A It's because I had talked to him before this and he said
3 he wasn't going to do anything outside normal course, and then
4 the word divest scared me, but I didn't realize it was a legal
5 term in this parlance here.

6 Q And so after he explained, you still wanted to make sure
7 that he wasn't divesting any assets, correct?

8 A Yes.

9 Q Okay. Since February 1st, you've exchanged exactly one
10 text messages with Mr. Scott; is that right?

11 A I think there've been several, several text messages. But
12 one on his birthday.

13 Q Yeah. And you haven't spoken to him in months, correct?

14 A In a couple months, yes.

15 Q All right. Let's talk about the replacement of Mr. Scott.
16 With -- with Mr. Scott's notice, someone needed to find a
17 replacement, correct?

18 A Yes.

19 Q And the replacement was going to be responsible for
20 managing a charitable organization with approximately \$200
21 million of assets, most of which was seeded directly or
22 indirectly through you, correct?

23 A Yes.

24 Q And the replacement was going to get his and her -- his or
25 her investment advice from you and NexPoint Advisors; do I

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1 have that right?

2 A That was the plan.

3 Q Okay. Ultimately, Mr. Patrick replaced Mr. Scott,
4 correct?

5 A Yes.

6 Q But it's your testimony that you had no knowledge that Mr.
7 Patrick was going to replace Mr. Scott until after it happened
8 on March 24, 2021. Correct?

9 A That's correct. I believe it happened suddenly.

10 Q So, for nearly two months after you had received notice of
11 Mr. Scott's intent to resign, you were uninvolved in the
12 process of selecting his replacement, correct?

13 A I was uninvolved. I'd say the process was dormant for an
14 extended period of time until Mark Patrick came on board, and
15 then Mark Patrick ran the process of interviewing multiple
16 potential candidates.

17 Q Mark Patrick didn't have any authority prior to March
18 24th, correct?

19 A Is March 24th the date that he transitioned the shares to
20 himself from Grant Scott?

21 Q Yep.

22 A That's when he then became the trustee of the DAF, yes.

23 Q Do you know -- do you know who was instructing Mr. Patrick
24 on who to interview or how to carry the process out?

25 A He was doing that on his own with, I think,

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1 recommendations from third-party tax firms.

2 Q So Mr. Patrick was trying to find a successor to Mr.
3 Scott, even though he had no authority to do that, and you
4 were completely uninvolved in the whole process? Do I have
5 that right?

6 A I was uninvolved, yes. He was trying to facilitate it for
7 the benefit of his friendship with Grant Scott and knowing
8 that it -- it -- with his resignation, it had to transition to
9 somebody. And he enjoys working on the DAF, he enjoys the
10 charitable stuff in the community, and he was the most
11 appropriate person to work on helping Grant transition.

12 MR. MORRIS: All right. I move to strike, Your
13 Honor. It's hearsay.

14 THE COURT: Sustained.

15 BY MR. MORRIS:

16 Q You're aware that Mr. Seery was appointed the Debtor's CEO
17 and CRO last summer, correct?

18 A Yes.

19 Q And you're aware that Mr. Seery's appointment was approved
20 by the Bankruptcy Court, correct?

21 A Yes.

22 Q And you were aware of that at the time it happened,
23 correct?

24 A Yes.

25 Q And even before that, in January of 2020, you consented to

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1 a settlement where you gave up control of the Debtor.

2 Correct?

3 A To the independent board for a consensual Chapter 11
4 restructuring that would leave Highland intact.

5 Q And do you understand that the gatekeeper provision in the
6 July order is exactly like the one that you agreed to in
7 January except that it applies to Mr. Seery instead of the
8 independent directors?

9 A I -- I learned a lot about that today, but I don't think
10 it's appropriate to move what applied to the board to the CEO
11 of a registered investment advisor.

12 Q Okay. I'm just asking you, sir. Listen carefully to my
13 question. Were you aware in January 2020 that you agreed to a
14 gatekeeper provision on behalf of the independent board?

15 A Generally, but not specifically.

16 Q Okay.

17 A Not -- not like what we've been going over today.

18 Q Okay. And you knew that Mr. Seery had applied to be
19 appointed CEO subject to the Court's approval, correct?

20 A Wasn't it backdated to March? I -- I think the hearing
21 was in June, but it was backdated for -- for money and other
22 purposes, right? I -- that's my recollection. I don't
23 remember otherwise.

24 Q You do remember that Mr. Seery got -- he got -- his
25 appointment got approved by the Court, right?

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1 A Yes. But, as far as the dates are concerned, I thought it
2 was either in March or retroactive to March. Maybe it was
3 June or July.

4 Q And you --

5 A But I don't remember.

6 Q Did you have your lawyers review the motion that was filed
7 on behalf of the Debtor?

8 A I'm -- I assume they do their job. I -- if they didn't, I
9 don't know.

10 Q Okay. That's what you hired them to do; is that fair?

11 A Yes.

12 Q Okay. Can we go to Exhibit 12, please? I think it's in
13 Binder 1. You've seen this document before, correct?

14 A Yes.

15 Q In fact, you saw versions of this complaint before it was
16 filed, correct?

17 A Yes, I saw one or two versions towards the end. I don't
18 know if I saw the final version, but --

19 Q Sir, you participated in discussions with Mr. Sbaiti
20 concerning the substance of this complaint before it was
21 filed, correct?

22 A Some. I would just use the word some.

23 Q Okay. Can you describe for me all of your conversations
24 with Mr. Sbaiti concerning the substance of this complaint?

25 MR. SBAITI: Your Honor, I would object on the basis

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1 of work product privilege and attorney-client communications.
2 He was an agent for my client, the DAF, at the time he was
3 having these discussions with us, and our discussions with him
4 were work product. So to the extent he can reveal the
5 conversations without discussing the actual content, we would
6 raise privilege objection, Your Honor.

7 THE COURT: Mr. Morris?

8 MR. MORRIS: Your Honor, there is no privilege here.
9 That's exactly why I asked Mr. Patrick the questions earlier
10 today. Mr. Dondero is not party to any agreement with the DAF
11 today. It's an informal agreement, perhaps, but there is no
12 contractual relationship, there is no privity any longer
13 between Mr. Dondero or any entity that owns and controls in
14 the DAF, as far as I know. If they have evidence of it, I'm
15 happy to listen, but that -- that's exactly why I asked those
16 questions of Mr. Patrick earlier today.

17 THE COURT: All right.

18 MR. SBAITI: Your --

19 THE COURT: That was the testimony. There's an
20 informal arrangement, at best.

21 MR. SBAITI: Well, Your Honor, I would suggest that
22 that doesn't necessarily mean that he isn't an agent of the
23 DAF. It doesn't have to be a formal agreement for him to be
24 an agent of the DAF.

25 Everyone's agreed he was an advisor. Everyone's agreed he

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1 was helping out. That is an agency relationship. It doesn't
2 have to be written down. It doesn't have to be a formal
3 investment advisory relationship. He's still an agent of the
4 DAF. He was requested to do something and agreed to do it
5 under the expectation that all of us had that those would be
6 privileged, Your Honor. That is -- that is sufficient -- that
7 is sufficient, I would argue, to get us where we need to be.
8 The privilege should apply, Your Honor, and they don't have a
9 basis for, I would say, invading the privilege, Your Honor.

10 THE COURT: Well, do you have any authority? Because
11 it just sounds wrong. He's not an employee of your client.
12 He doesn't have any contractual arrangement with your client.

13 MR. SBAITI: Your Honor, I would dispute the idea
14 that he has no contractual arrangement with my client. The
15 question was asked, do you have a -- do you have a written
16 agreement, and then the question was, so you don't have a
17 contract, and the answer was no, I don't have a contract,
18 building upon that first -- that first question. But the
19 testimony as he just recounted is that there is an agreement
20 that he would advise Mr. Patrick and he would advise the DAF.

21 THE COURT: Okay.

22 MR. SBAITI: That's -- that's a contract.

23 THE COURT: Okay. My question was, do you have any
24 legal authority? That's what I meant when I said authority.
25 Any legal authority to support the privilege applying in this

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1 kind of --

2 MR. SBAITI: In an informal arrangement, Your Honor?
3 I don't have one at my fingertips at the moment, Your Honor,
4 but I don't know that that should be a reason to invade the
5 privilege.

6 And I would just add, Your Honor, I would just add, we've
7 already -- because of the purpose of these questions, you've
8 heard Mr. Morris state several times that the purpose is to
9 show that Mr. -- that Mr. Dondero had some role in advising
10 and participating in the creation of this complaint. That's
11 been conceded by myself. I believe it was conceded by Mr.
12 Dondero.

13 The actual specific facts, the actual specific
14 conversations, Your Honor, shouldn't be relevant at this point
15 and they shouldn't be admissible, given -- given the
16 relevancy, given the perspective of the privilege.

17 THE COURT: Okay.

18 MR. MORRIS: If I might --

19 THE COURT: I overrule your objection. I don't think
20 a privilege has been shown here --

21 MR. SBAITI: And Your Honor, --

22 THE COURT: -- and I think it's relevant.

23 MR. SBAITI: -- I would ask if we could *voir dire* the
24 witness on the basis of the privilege, if that's --

25 THE COURT: All right. You may do so.

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1 VOIR DIRE EXAMINATION

2 BY MR. SBAITI:

3 Q Mr. Dondero, do you have a relationship with the DAF?

4 A Yes.

5 Q How would you describe that relationship?

6 A I view myself and my firm as the investment advisor. I
7 was actually surprised by the testimony today that there
8 wasn't a contract in place, but there should be one. There
9 should be one soon, in my opinion.

10 Q Have you -- did you hear Mr. Patrick testify earlier that
11 he comes to you for advice?

12 A Yes.

13 Q Is that --

14 A As he should. Yeah.

15 Q Is that true?

16 A Yes.

17 Q When you render that advice, do you render that advice
18 with some expectation about him following or listening to that
19 advice?

20 A Okay, I think there's only been one investment or one
21 change in the DAF portfolio since Mark Patrick's been
22 involved, only one, and it was a real estate investment that I
23 wasn't directly involved in. And so the people who put that
24 investment forward worked with Mark without my involvement,
25 and then I think Mark got third-party appraisal firms and

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1 third-party valuation firms involved to make sure he was
2 comfortable, which was a good process.

3 Q When you supplied information to Mr. Patrick, do you do so
4 under the belief that there is a contractual, informal or
5 formal, relationship?

6 MR. MORRIS: Objection to the form of the question.

7 THE COURT: Overruled.

8 MR. SBAITI: What specific form?

9 THE COURT: Overruled.

10 MR. SBAITI: Thank you.

11 THE WITNESS: Yes. I believe it -- it's a
12 relationship that can and should be papered as -- soon.
13 That's my -- I mean, unless I get some reason from counsel not
14 to, I think it's something that should be memorialized.

15 BY MR. SBAITI:

16 Q And when you have that -- in that relationship, when you
17 communicate with Mr. Patrick about matters, investment or
18 otherwise, is there an expectation of privacy?

19 A Yes.

20 Q When Mr. Patrick -- did Mr. Patrick request that you
21 interface with my firm and myself, as he testified earlier?

22 A Yes.

23 Q And when he did so, did he ask you to do so in an
24 investigatory manner?

25 MR. MORRIS: Objection to the form of the question.

1 THE COURT: Sustained. Rephrase.

2 BY MR. SBAITI:

3 Q Did he tell you why he wanted you to talk to us?

4 A Yeah. At that point, he had started an investigation into
5 the HarbourVest transaction.

6 Q And -- and when he -- when you were providing information
7 to us, did he tell you whether he wanted you to help the
8 Sbaiti firm conduct the investigation?

9 A The -- overall, the financial numbers and tables in there
10 were prepared by not myself, but I -- I did -- I did help on
11 -- on the -- some of the registered investment advisor issues
12 as I understood them.

13 Q Okay. And the communications that you had with us, was
14 that part of our investigation?

15 MR. MORRIS: Objection to the form of the question.

16 THE COURT: Overruled.

17 THE WITNESS: Yes.

18 BY MR. SBAITI:

19 Q And did you understand that we had been retained by Mr.
20 Patrick on behalf of the DAF and CLO Holdco?

21 A Yes.

22 Q And did you appreciate or have any understanding of
23 whether or not you were helping the law firm perform its legal
24 function on behalf of the DAF and CLO Holdco?

25 A Perform its legal function? I was just helping with

1 regard to the registered investment advisor aspects of the
2 overall, you know, like that.

3 Q Let me ask a more simple question. Did you -- did you
4 appreciate that you were assisting a law firm in its
5 representation of the DAF?

6 A Yes.

7 Q And you were helping the law -- and were you helping the
8 law firm develop the facts for a complaint?

9 A Yes. I would almost say, more importantly, I wanted to
10 make sure that there weren't errors in terms of understanding
11 either how CLOs worked or how the Investment Advisers Act
12 worked. So I was -- it was almost more of a proofing.

13 MR. SBAITI: Your Honor, based upon that, I mean,
14 he's helping a law firm perform its function for the client.
15 That's an agency relationship that gets cloaked. You can call
16 him a consulting expert. You can call him, to a certain
17 extent, a fact witness, Your Honor. If we want to take a
18 break, I'm sure we could find authority on that basis for a
19 work product privilege pretty easily.

20 But he's an agent of the DAF. Even if it's an informal
21 agency relationship, that's still agency. He's in some
22 respects, I guess, an agent of the law firm, to the extent
23 he's helping us perform our legal work. And it seems like
24 invading that privilege at this juncture is (a) unnecessary,
25 because we've already conceded that there's been

1 conversations, which I think is the relationship they wanted
2 to establish. And it's not unusual for a law firm to use
3 someone with specialized knowledge to understand some of the
4 intricacies of the actual issues that they're -- that they're
5 getting ready to litigate.

6 THE COURT: Okay. I find no privilege. All right.
7 That's the ruling.

8 MR. BRIDGES: Your Honor, may I add one thing to the
9 objection for the record?

10 THE COURT: Okay, we have a rule, one lawyer per
11 witness. Okay? So, thank you. A District Court rule, by the
12 way, not mine.

13 MR. SBAITI: Your Honor, may we take a short recess,
14 given the Court's ruling?

15 THE COURT: Well, I'd really like to finish this
16 witness. How much longer do you have?

17 MR. MORRIS: About eight more questions.

18 THE COURT: All right. We'll take a break after the
19 direct, okay?

20 MR. SBAITI: Your Honor, I would ask that we -- if
21 he's going to ask him more questions about the content of the
22 communications, I ask respectfully for a recess so we can
23 figure out what to do about that. Because, right now, there's
24 a ruling that he's going to have to reveal privileged
25 information, and we don't have a way to go around and figure

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1 out how to resolve that issue if we needed to.

2 THE COURT: Okay. I've ruled it's not privilege.

3 Okay?

4 MR. SBAITI: I understand that, Your Honor, but --

5 THE COURT: Your client is CLO Holdco and the DAF.

6 MR. SBAITI: Yes, Your Honor.

7 THE COURT: Representative, Mark Patrick. No
8 contract with Mr. Dondero. The fact that he may be very
9 involved I don't think gives rise to a privilege. That's my
10 ruling.

11 MR. SBAITI: I understand, Your Honor. I understand,
12 Your Honor, but I'm asking for a recess so that we can at
13 least undertake to provide Your Honor with some case law on a
14 reconsideration before we go there, because that bell can't be
15 unrung.

16 MR. MORRIS: Your Honor, if I may?

17 MR. SBAITI: And it's --

18 THE COURT: Uh-huh.

19 MR. MORRIS: I'm happy to give them ten minutes, Your
20 Honor, as long as they don't talk to the witness.

21 THE COURT: Okay.

22 MR. MORRIS: I want to give them the opportunity. Go
23 right ahead.

24 THE COURT: All right. We'll take a ten-minute
25 break.

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1 MR. SBAITI: Thank you.

2 THE COURT: It's 3:05.

3 THE CLERK: All rise.

4 (A recess ensued from 3:03 p.m. until 3:17 p.m.)

5 THE CLERK: All rise.

6 THE COURT: Okay. Please be seated. Going back on
7 the record in Highland. Mr. Sbaiti?

8 MR. SBAITI: Yes, Your Honor. May I approach?

9 THE COURT: You may.

10 MR. SBAITI: Your Honor, we have some authority to
11 support the position we'd taken. We'd ask the Court to
12 reconsider your ruling on the privilege.

13 The first bit of authority is Section 70 of the
14 Restatement (Third) of Law Governing Lawyers. Privileged
15 persons within the meaning of Section 68, which governs the
16 privilege, says that those persons include either agents of
17 either the lawyer or the client who facilitate communications
18 between the two in order for the lawyers to perform their
19 function.

20 Another case that we found is 232 F.R.D. 103 from the
21 Southern District of New York, 2005. It's *Express Imperial*
22 *Bank of U.S. v. Asia Pulp Company*. And in that case, Your
23 Honor, the consultant was a -- had a close working
24 relationship with the company and performed a similar role to
25 that of the employee and was assisting the law firm in

1 performing their functions, and the court there found that the
2 work product privilege -- actually, the attorney-client
3 privilege -- attached in what they called a Functional
4 Equivalents Doctrine, Your Honor.

5 And here we have pretty much the same set of facts that's
6 pretty much undisputed. The fact that there -- and the fact
7 that there isn't a written agreement doesn't mean there isn't
8 a contractual arrangement for him to have rendered services
9 and advice. And the fact that he's, you know, recruited by us
10 to help us perform our functions puts him in the realm, as I
11 said, of something of a consulting expert.

12 Either way, the work product privilege, Your Honor, should
13 apply, and we'd ask Your Honor not to invade that privilege at
14 this point, Your Honor. And I'll ask you to reconsider your
15 prior ruling.

16 Furthermore, I believe Mr. Morris, you know, in making his
17 argument, is trying to create separation. The fact that he
18 has no relationship, that the privilege can be invaded, seems
19 to defeat the whole premise of his whole line of questioning.

20 So, once again, Your Honor, I just -- it's a tit for a tat
21 there, and it seems to kind of eat itself. Either he is
22 working with us, which we've admitted he is working with us,
23 us being the law firm, and helping us do our jobs, or he's
24 not. And if he's not, then this should be done.

25 THE COURT: Okay.

1 MR. MORRIS: Your Honor, briefly?

2 THE COURT: Well, among other things, what do you
3 want me to do? Take a break and read your one sentence from
4 the Restatements and your one case? And could you not have
5 anticipated this beforehand?

6 MR. SBAITI: Your Honor, --

7 THE COURT: This is not the way we work in the
8 bankruptcy courts, okay? We're business courts. We have
9 thousands of cases. We expect briefing ahead of time.

10 MR. SBAITI: Your Honor, this has been a rather
11 rushed process anyway. And to be honest, --

12 THE COURT: When was the motion filed?

13 MR. SBAITI: Your Honor, --

14 THE COURT: More than a month ago.

15 MR. SBAITI: -- his deposition was a week ago.

16 THE COURT: Well, okay. So you could not have
17 anticipated this issue until his deposition one week ago?

18 MR. SBAITI: Your Honor, this issue arose at the
19 deposition, obviously, because that's what he's quoting from.
20 However, at least to us, this is such a well-settled area, and
21 to be honest, --

22 THE COURT: Such a well-settled area that you have
23 one sentence from the Restatement and one case from the
24 Southern District of New York?

25 MR. SBAITI: No, Your Honor. I think the work

1 product privilege lexicon -- we had ten minutes to try to find
2 something more on point than the general case law that applies
3 the work product privilege to people that work with lawyers,
4 consultants who work with lawyers, employees who work with
5 lawyers, even low-down employees who normally wouldn't enjoy
6 the privileges that attach to the corporation, when they work
7 with the company for -- when they work with the company
8 lawyers, it typically attaches.

9 THE COURT: You know, obviously, I know a few things
10 about work product privilege, but he doesn't check any of the
11 boxes you just listed out.

12 MR. SBAITI: I disagree, Your Honor.

13 THE COURT: He's not an employee. He's not a low-
14 level employee.

15 MR. SBAITI: He's a consultant.

16 THE COURT: With no agreement.

17 MR. SBAITI: With a verbal agreement. He's an
18 advisor. And he was recruited by us, and at the request of
19 the DAF, of the head of the DAF, Mr. Patrick, to help us do
20 our job for the DAF. I don't --

21 THE COURT: Okay. Mr. Morris, what do you want to
22 say?

23 MR. MORRIS: Just briefly, Your Honor. This issue
24 has been ripe since last Tuesday. They directed him not to
25 answer a whole host of questions about his involvement at the

1 deposition last Tuesday, so they've actually had six days to
2 deal with this. That's number one.

3 Number two, there's absolutely nothing inconsistent with
4 the Debtor's position that Mr. Dondero is participating in the
5 pursuit of claims and at the same time saying that his
6 communications with the Sbaiti firm are not privileged.
7 There's nothing inconsistent about that.

8 So the argument that he just made, that somehow because
9 we're trying to create separation, that that's inconsistent
10 with our overall arching theme that Mr. Dondero is precisely
11 engaged in the pursuit of claims against Mr. Seery, I think
12 that takes care of that argument.

13 Finally, your Honor, with respect to this consultancy
14 arrangement, not only isn't there anything in writing, but
15 either you or Mr. Sbaiti or I, I think, should ask Mr. Dondero
16 the terms of the agreement. Is he getting paid? Is he doing
17 it for free? Who retained him? Was it Mr. -- because the --
18 there's no such thing. There's no such thing.

19 The fact of the matter is what happened is akin to I have
20 a slip-and-fall case and I go to a personal injury lawyer and
21 I bring my brother with me because I trust my brother with
22 everything. It's not privileged. Any time you bring in
23 somebody who is not the attorney or the client, the privilege
24 is broken. It's really quite simple. Unless there's a common
25 interest. They can't assert that here. There is no common

1 interest. So --

2 THE COURT: Okay. Mr. Sbaiti, I'll give you up to
3 three more minutes to *voir dire* Mr. Dondero to try to
4 establish some sort of agency relationship or other evidence
5 that you think might be relevant.

6 VOIR DIRE, RESUMED

7 BY MR. SBAITI:

8 Q Mr. Dondero, when you provided information to the law
9 firm, were you doing so under an agency relationship? Do you
10 know what an agency relationship is?

11 A Generally. When you're working on the -- or why don't you
12 tell me?

13 Q Tell me your understanding, so we can use --

14 A That you're working for the benefit or as a proxy for the
15 other entity or the other firm or the other person.

16 Q Right. So you're working for the DAF?

17 A Yes.

18 Q Do you do work for the DAF?

19 A Yes. As I stated, I'm surprised there isn't -- when we
20 reconstituted after leaving Highland, we put in shared
21 services agreements in place and asset management agreements
22 in place and tasked people with doing that for most of the
23 entities. There might be still a few contracts that are being
24 negotiated, but I thought most of them were in place.

25 So I would imagine that there'll be an asset management

1 agreement with the DAF back to NexPoint sometime soon, so it
2 -- it's --

3 Q Let me ask you this question. When you were providing
4 information to us and having conversations with us, were you
5 doing that as an agent of the DAF, the way you described it,
6 --

7 A Yes.

8 Q -- on their behalf?

9 A Yes.

10 Q Were you also doing it to help us do our jobs for the DAF?

11 A Yes.

12 Q Did you respond to requests for information from myself?

13 A Yes.

14 Q Did you help coordinate other -- finding other witnesses
15 or sources of information at my request?

16 A Yes.

17 Q Did you do so based upon any understanding that I was
18 working on behalf of the DAF for that?

19 A Yes. I knew -- I knew you were working for the DAF. No
20 one else, yeah.

21 Q And so -- and so did you provide any expertise or any in-
22 depth understanding to myself in helping me prepare that
23 complaint?

24 A I think so, but I give a lot of credit to your firm for
25 researching things that I -- I knew reasonably well but then

1 you guys researched in even more depth.

2 MR. MORRIS: I'd move to strike the answer as
3 nonresponsive.

4 THE COURT: Sustained.

5 BY MR. SBAITI:

6 Q Let me ask the question again. When you were providing us
7 information and expertise, were you doing so knowing you were
8 working -- helping us work for the DAF?

9 A Yes.

10 Q Now, did you demand any compensation for that?

11 A No.

12 Q Do you require compensation necessarily to help the DAF?

13 A No.

14 Q Do you do other things for the DAF sometimes without
15 compensation?

16 A Right. We do the right thing, whether we get paid for it
17 or not. Yes.

18 Q Had you known that our communications were not necessarily
19 part of an agency relationship with the DAF, as you understood
20 it, that you were just some guy out on the street, would you
21 have had the same conversations with us?

22 A (sighs)

23 Q Let me ask a better question. If I had come to you
24 working for someone that wasn't the DAF, you didn't already
25 have a relationship with, would you have given us the same

1 help?

2 A I wouldn't have been involved if it was somebody else.

3 Q Is the reason you got involved because we were the lawyers
4 for the DAF?

5 A Correct.

6 MR. MORRIS: Objection. It's just leading. This is
7 all leading.

8 THE WITNESS: Correct.

9 THE COURT: Sustained.

10 MR. SBAITI: Can --

11 THE WITNESS: Yeah. Sorry.

12 BY MR. SBAITI:

13 Q Do you get -- do -- did you -- did you do work for the --
14 did you provide the help for the DAF laboring under the
15 understanding that there was an agreement?

16 MR. MORRIS: Objection; leading.

17 THE COURT: Sustained.

18 BY MR. SBAITI:

19 Q Earlier you testified you believed there was an agreement?

20 A I thought that was an agreement, and I thought there will
21 be one shortly if there isn't one, yes.

22 Q Okay.

23 A And so we -- I've been operating in a bona fide way in the
24 best interests of the DAF throughout -- assuming there was an
25 agreement, but even if there wasn't a formal one, I would

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1 still be moving in the best interests of the DAF and helping
2 your firm out or --

3 Q And you did that because you believed there was an
4 agreement or soon would be?

5 A Yes.

6 MR. SBAITI: Your Honor, I mean, I believe we've
7 established a dual role here, both as an agent of the DAF and
8 as an agent of the law firm, Your Honor.

9 THE COURT: Okay. Just a minute. I'm looking at
10 Texas authority on common interest privilege to see if there's
11 anything that --

12 (Pause.)

13 THE COURT: All right. Again, it would have been
14 very nice to get briefing ahead of time. I think this
15 absolutely could have been anticipated.

16 I do not find the evidence supports any sort of protection
17 of this testimony under work product privilege, common
18 interest privilege. I just haven't been given authority or
19 evidence that supports that conclusion. So the objections are
20 overruled.

21 Mr. Morris, go ahead.

22 DIRECT EXAMINATION, RESUMED

23 BY MR. MORRIS:

24 Q Can you describe for the Court the substance of your
25 communications with Mr. Sbaiti concerning the complaint?

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1 A As I've stated, directing him toward the Advisers Act and
2 then largely in a proofing function regarding CLO nomenclature
3 and some of the other fund nomenclature that sometimes gets
4 chaotic in legal briefs.

5 Q Did you communicate in writing at any time with anybody at
6 the Sbaiti firm regarding any of the matters that are the
7 subject of the complaint?

8 A I can't remember anything in writing. Almost everything
9 was verbal, on the phone.

10 Q You don't tend to write much, right?

11 A Periodically.

12 Q Did you communicate with Mr. Patrick? Did you communicate
13 with anybody in the world in writing regarding the substance
14 of anything having to do with the complaint?

15 MR. SBAITI: Objection, Your Honor. Argumentative.

16 THE COURT: Overruled.

17 THE WITNESS: I --

18 MR. SBAITI: Your Honor, may I just -- one
19 housekeeping. Rather than raise the same objection, may we
20 have a standing objection, just so we're not disruptive, as to
21 the privilege, just for preservation purposes, on the content
22 of these communications? Otherwise, I'll just make the same
23 objections and we can go through it.

24 THE COURT: Well, disruptive as it may be, I think
25 you need to object to every --

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1 MR. SBAITI: Okay.

2 THE COURT: -- question you think the privilege
3 applies to.

4 MR. SBAITI: I will do so. Thank you, Your Honor.
5 Uh-huh.

6 BY MR. MORRIS:

7 Q Mr. Dondero, the question was whether you've ever
8 communicated with anybody in the world in writing concerning
9 anything having to do with the complaint?

10 A Not that I remember.

11 Q Okay.

12 MR. MORRIS: I will point out, Your Honor, that last
13 week, when the privilege was asserted, I had requested the
14 production of a privilege log. I was told -- I forget exactly
15 what I was told, but we never received one. I'll just point
16 that out as well.

17 THE COURT: Okay.

18 BY MR. MORRIS:

19 Q You provided comments to the drafts of the complaint
20 before it was filed, correct?

21 A Yes, a few.

22 Q Can you describe for the Court all of the comments that
23 you provided to earlier drafts of the complaint?

24 MR. SBAITI: Your Honor, we object on the basis of
25 privilege and work product and joint -- joint interest

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1 privilege.

2 THE COURT: Overruled.

3 THE WITNESS: It's along the lines of things I've
4 said in this court several times. The obligations under the
5 Advisers Act cannot be negotiated away and they cannot be
6 waived by the people involved, full stop. I remember giving
7 the -- Mazin the example of the only reason why we're in a
8 bankruptcy is from an arbitration award that, even though we
9 did what was in the best interests of the investors, we got
10 the investors out more than whole over an extended period of
11 time, they got an arbitration award that said when we
12 purchased some of the secondary interests we should have
13 offered them up to the other 800 members in the committee
14 besides the -- the 800 investors in the fund besides the eight
15 people on the committee who had approved it and that the
16 committee couldn't approve a settlement that went against the
17 Advisers Act and the Advisers Act stipulates specifically that
18 you have to offer it up to other investors before you take an
19 opportunity for yourself. And someday, hell or high water, in
20 this court or some other, we will get justice on that. And
21 that was the primary point that I reminded Mazin about.

22 BY MR. MORRIS:

23 Q And that's exactly the conversation you had with Mark
24 Patrick that started this whole thing, correct?

25 A No.

1 Q You told Mark Patrick that you believe the Debtor had
2 usurped a corporate opportunity that should have gone to the
3 DAF, didn't you?

4 A That was not our conversation.

5 Q So when Mr. Patrick testified to that earlier today, he
6 just got it wrong, right?

7 A Well, maybe later on, but it wasn't that in the beginning.
8 The beginning, any conversation I had with Mark Patrick in the
9 beginning was smelling a rat in the way that the Debtor had
10 priced the portfolio for HarbourVest.

11 Q Hmm. So you're the one, again, who started that piece of
12 the discussion as well, correct?

13 A Started the -- I -- I guess I smelled a rat, but I put the
14 person who could do all the numbers in touch with the Sbaiti
15 firm.

16 Q And was the rat Mr. Seery?

17 A Was the rat Mr. Seery? Or the independent board. Or a
18 combination thereof. I believe the independent board knew
19 exactly what Seery was doing with --

20 Q Do you have any idea --

21 A -- HarbourVest.

22 Q Do you have any idea why, why the Sbaiti firm didn't name
23 the whole independent board in the -- in the motion for leave
24 to amend?

25 A I don't know. Maybe they will at some point.

1 Q Yeah.

2 A I don't know.

3 Q But did you tell the Sbaiti firm that you thought the
4 whole independent board was acting in bad faith and was a rat?

5 MR. SBAITI: Your Honor, I object on the basis of
6 privilege.

7 THE COURT: Overruled.

8 MR. SBAITI: All three.

9 THE WITNESS: I knew Jim Seery was and I knew Jim
10 Seery had weekly meetings with the other independent board
11 members, so the HarbourVest settlement was significant enough
12 that it would have been approved, but I don't have direct
13 knowledge of their involvement.

14 BY MR. MORRIS:

15 Q And so you -- but you believed Jim Seery was certainly a
16 rat, right?

17 A Oh, I -- there was a defrauding of third-party investors
18 to the tune of not insignificant 30, 40, 50 million bucks, and
19 it was obfuscated, it was -- it was highly obfuscated in the
20 9019.

21 Q Did you think Mr. Seery was a rat, sir? Yes or no?

22 A I believe he had monthly financials. He knew that the
23 numbers presented in the 9019 were wrong. And if that makes
24 him a rat, that makes him a rat. Or maybe he's just being
25 aggressive for the benefit of his incentive or for the estate.

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1 But I -- I believe those things wholeheartedly.

2 Q Did you tell the Sbaiti firm you thought Jim Seery was a
3 rat?

4 MR. SBAITI: Objection, Your Honor. Privilege.

5 THE COURT: Overruled.

6 THE WITNESS: I -- I don't remember using those
7 words.

8 BY MR. MORRIS:

9 Q Did you tell the Sbaiti Firm that you thought Jim Seery
10 had engaged in wrongful conduct?

11 MR. SBAITI: Your Honor, objection. Privilege.

12 THE COURT: Overruled.

13 THE WITNESS: I believe he violated the Advisers Act,
14 and I was clear on that throughout.

15 BY MR. MORRIS:

16 Q Listen carefully to my question. Did you tell the Sbaiti
17 firm that you believed that Jim Seery engaged in wrongful
18 conduct?

19 MR. SBAITI: Objection, Your Honor. Calls for
20 privileged communications.

21 THE COURT: Overruled.

22 THE WITNESS: I think I gave the answer. I'll give
23 the same answer. I believe he violated the Advisers Act.

24 BY MR. MORRIS:

25 Q What other wrongful conduct did you tell the Sbaiti firm

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1 you thought Mr. Seery had engaged in?

2 MR. SBAITI: Same objection, Your Honor.

3 THE COURT: Overruled.

4 MR. SBAITI: Calls for privileged communications.

5 THE COURT: Overruled.

6 THE WITNESS: I -- I just remember the obfuscating
7 and mispricing portfolio violations of the Advisers Act was
8 all I discussed with the Sbaiti firm regarding Seery's
9 behavior.

10 BY MR. MORRIS:

11 Q Did you talk to them about coming to this Court under the
12 gatekeeper order to see if you could get permission to sue Mr.
13 Seery?

14 A I --

15 MR. SBAITI: Objection, Your Honor. Calls for
16 privileged communication.

17 THE COURT: Overruled.

18 THE WITNESS: I wasn't involved in any of the --

19 BY MR. MORRIS:

20 Q Did you --

21 A -- tactical stuff on who to sell or -- who to sue or when
22 or whatever.

23 Q Did you tell the Sbaiti firm that you thought they should
24 sue Mr. Seery?

25 MR. SBAITI: Objection, Your Honor. Calls for

1 privileged communication.

2 THE COURT: Overruled.

3 MR. SBAITI: I'll also say, Your Honor, the question
4 is getting a little argumentative.

5 THE WITNESS: I didn't get directly --

6 THE COURT: Overruled.

7 THE WITNESS: I didn't get directly involved in who
8 was -- who was specifically liable.

9 BY MR. MORRIS:

10 Q How many times did you speak with the Sbaiti firm
11 concerning the complaint?

12 A Half a dozen times, maybe.

13 Q Did you ever meet with them in person?

14 A I've only met with them in person a couple, three times.
15 And I don't think any of them -- no, it was, excuse me, it was
16 on deposition or other stuff. It wasn't regarding this.

17 Q Did you send them any information that was related to the
18 complaint?

19 A I did not.

20 Q Did you ask anybody to send the Sbaiti firm information
21 that related to the complaint?

22 A I did not. I -- I was aware that Hunter Covitz was
23 providing the historic detailed knowledge to the firm, but it
24 -- it wasn't -- I don't believe it was me who orchestrated
25 that.

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1 Q Did you talk to anybody at Skyview about the allegations
2 that are contained in the complaint before it was filed?

3 A I don't -- I don't remember.

4 Q Have you ever talked to Isaac Leventon or Scott Ellington
5 about the allegations in the complaint?

6 A No. They weren't involved.

7 Q How about -- how about D.C. Sauter? You ever speak to him
8 about it?

9 A I don't --

10 MR. TAYLOR: Objection, Your Honor.

11 THE WITNESS: I don't remember.

12 MR. TAYLOR: At this point, D.C. Sauter is indeed an
13 employee of Skybridge and is a general counsel for some of the
14 entities which he worked for. And to the extent he's trying
15 to ask for those communications, that would be invasion of the
16 privilege.

17 MR. MORRIS: I'll withdraw it, Your Honor. That's
18 fair.

19 THE COURT: Okay

20 MR. MORRIS: That's fair.

21 THE COURT: Question withdrawn.

22 THE WITNESS: I thought you only had eight more
23 questions.

24 MR. MORRIS: Opened the door.

25 BY MR. MORRIS:

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1 Q Can you describe the general fact -- withdrawn. You
2 provided facts and ideas to the Sbaiti firm in connection with
3 your review of the draft complaint, correct?

4 A Ideas and proofreading.

5 Q Anything beyond what you haven't described already?

6 A Nope.

7 Q Okay. Who is your primary contact at the Sbaiti firm, if
8 you had one?

9 A Mazin.

10 Q Okay. Did you suggest to Mr. Sbaiti that Mr. Seery should
11 be named as a defendant in the lawsuit before it was filed?

12 MR. SBAITI: Your Honor, calls for privileged
13 communication. We object --

14 THE COURT: Overruled.

15 MR. SBAITI: -- to that answer.

16 MR. SBAITI: Okay.

17 THE WITNESS: Again, no. I wasn't involved with the
18 tactics on who would be defendants and when or if other people
19 would be added.

20 BY MR. MORRIS:

21 Q Did you -- are familiar with the motion to amend that was
22 filed by the Sbaiti firm?

23 A I'm more familiar with it after today --

24 Q Right.

25 A -- than I was before.

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1 Q And were you aware that that motion was going to be filed
2 prior to the time that it actually was filed?

3 A I -- I don't remember. Probably.

4 Q And who would have been the source of that information?
5 Would that have been Mr. Sbaiti?

6 A Yes.

7 Q Okay. And did you express any support for the decision to
8 file the motion for leave to amend in the District Court?

9 A I -- I wasn't involved. It was very complicated legal
10 preservation conver... -- I wasn't involved. I knew the
11 conversations were going on between different lawyers, but I
12 wasn't involved in the ultimate decision. I didn't encourage,
13 applaud, or even know exactly what court it was going to be
14 filed in.

15 MR. MORRIS: All right. I have no further questions,
16 Your Honor.

17 THE COURT: All right. Pass the witness.

18 MR.

19 ANDERSON: We have no questions, Your Honor.

20 THE COURT: Okay. Any questions from Respondents?

21 MR. SBAITI: No questions.

22 THE COURT: Okay. Mr. Taylor?

23 CROSS-EXAMINATION

24 BY MR. TAYLOR:

25 Q Mr. Dondero, --

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1 A Yes, sir.

2 Q -- you are not the authorized representative of CLO

3 Holdco, are you?

4 A No.

5 Q You're not the authorized representative for the DAF, are
6 you?

7 A No.

8 Q Do you know who that person is as we sit here today?

9 A Yes.

10 Q Who is that?

11 A Mark Patrick.

12 Q Thank you.

13 MR. TAYLOR: No further questions.

14 THE COURT: Any redirect on that cross?

15 MR. MORRIS: I do not, Your Honor. I would just like
16 to finish up the Debtor's case in chief by moving my exhibits
17 into evidence.

18 THE COURT: Okay. Mr. Dondero, you're excused.

19 (The witness steps down.)

20 THE COURT: All right. So you have no more
21 witnesses; you're just going to offer exhibits?

22 MR. MORRIS: Yes, Your Honor.

23 THE COURT: Okay.

24 MR. MORRIS: So, at Docket #2410, --

25 THE COURT: Uh-huh.

1 MR. MORRIS: -- the Court will find Exhibits 1
2 through 53.

3 THE COURT: Uh-huh.

4 MR. MORRIS: In advance, Your Honor, I've conferred
5 with the Respondents' counsel. They had previously objected
6 to Exhibits 15 and 16, which I believe were the Grant Scott
7 deposition transcripts. They objected to them on the grounds
8 of lack of completeness because I had taken the time to make
9 deposition designations, but I'm happy to put the entirety of
10 both transcripts into evidence, and I hope that that will
11 remove the objections to Exhibits 15 and 16.

12 THE COURT: All right. Before we confirm, let's just
13 make sure we have the right one.

14 MR. MORRIS: Oh, I apologize.

15 THE COURT: I have 16 as the July order.

16 MR. MORRIS: I apologize. You're absolutely right,
17 Your Honor. What I was referring to was -- oh, goodness. One
18 second. (Pause.) I was referring to Exhibits 23 and 24.
19 Those are Mr. Scott's deposition designations. They had
20 lodged an informal objection with me on grounds of
21 completeness. And in order to resolve that objection, we're
22 happy to put the entirety of both transcripts in.

23 THE COURT: All right. So if our Respondents could
24 confirm with the agreement to put in the entire depositions at 23
25 and 24, you stipulate to 1 through 53?

1 MR. PHILLIPS: We also -- Your Honor, --

2 MR. MORRIS: Yeah, I was going to take them one at a
3 time. Just take those two.

4 MR. PHILLIPS: Yeah, can we just take those two?
5 Confirmed?

6 MR. MORRIS: Okay.

7 THE COURT: Oh, okay.

8 MR. PHILLIPS: Because there are other -- there are
9 other -- we exchanged objections to each other's witness and
10 exhibit lists. And so I think you can handle the rest of them
11 kind of in a bunch, right?

12 MR. MORRIS: Yeah. Yeah, there's two bunches,
13 actually.

14 MR. PHILLIPS: Yeah.

15 THE COURT: Okay. So you have just now stipulated to
16 23 and 24 being admitted --

17 MR. MORRIS: Correct.

18 THE COURT: -- with the full depos? Okay.

19 MR. PHILLIPS: Yes, ma'am. Thank you.

20 THE COURT: All right.

21 (Debtor's Exhibits 23 and 24 are received into evidence.)

22 MR. MORRIS: And then the next two that they objected
23 to are Exhibits 15 and 16. 15 is the January order and 16 is
24 the July order. They objected on relevance grounds. I think
25 16 -- these are the two orders that the Debtors contend the

1 Respondents have violated, so I don't understand the relevance
2 objection, but that's what it was and that's my response.

3 MR. PHILLIPS: Resolved, Your Honor.

4 THE COURT: Okay. 15 and 16 are admitted.

5 (Debtor's Exhibits 15 and 16 are received into evidence.)

6 MR. MORRIS: Okay. And then the last objection
7 relates to a group of exhibits. They're Exhibits 1 through
8 11. Those exhibits I think either come in together or stay
9 out together. They are exhibits that relate to the
10 HarbourVest proceedings, including deposition notices,
11 including I think the transcript from the hearing, the Court's
12 order, the motion that was filed.

13 The Debtor believes that those documents are relevant
14 because they go right to the issue of the gatekeeper order and
15 had they filed, had the Respondents followed the gatekeeper
16 order, this is -- this is why they didn't do it. You know
17 what I mean? That's the argument, is that the Respondents,
18 one of the reasons the Respondents -- argument -- one of the
19 reasons the Respondents didn't come to this Court is because
20 they knew this Court had that kind of record before it. And I
21 think that's very relevant.

22 THE COURT: All right. Response?

23 MR. PHILLIPS: Your Honor, we think that these
24 exhibits are not relevant. We have a very focused, we think,
25 -- we have the Court's order. Those objections are withdrawn.

1 We have the complaint. We have the motion to amend. And the
2 issue is whether the motion to amend, which was dismissed one
3 day, or the next day after it was filed, constitutes criminal
4 -- constitutes contempt.

5 So we think the prior proceedings go to their underlying
6 argument, which is the lawsuit or the complaint is no good,
7 and that has nothing to do with -- there's been no foundation
8 laid and it's not relevant what happened in connection with
9 the HarbourVest settlement. It is what it is, and there's no
10 dispute that it is what it is, but it's not relevant to
11 establish any type of -- they've even said intent is not even
12 relevant here. So we -- that's -- we think all of that goes
13 out and simplifies the record, because it has nothing to do
14 with whether or not there was a contempt.

15 THE COURT: Response?

16 MR. MORRIS: We withdraw the exhibits, Your Honor.
17 I'm just going to make it simple for the Court.

18 THE COURT: Okay.

19 MR. MORRIS: I'm just going to make it simple for the
20 Court.

21 THE COURT: 1 through 11 are withdrawn.

22 (Debtor's Exhibits 1 through 11 are withdrawn.)

23 MR. MORRIS: So, the balance, there was no objection.
24 So all of the Debtor's exhibits on Docket #2410 -- let me
25 restate that. Exhibits 12 through 53 no longer have an

1 objection. Is that correct?

2 MR. PHILLIPS: Yes.

3 MR. MORRIS: Okay. And then --

4 MR. PHILLIPS: Confirmed.

5 THE COURT: Okay.

6 (Debtor's Exhibits 12 through 53 are received into
7 evidence.)

8 MR. MORRIS: Okay. Thank you. And then we filed an
9 amended list, I believe, yesterday --

10 THE COURT: Uh-huh.

11 MR. MORRIS: -- to add Exhibits 40 -- 54 and 55.

12 THE COURT: Uh-huh.

13 MR. MORRIS: And those exhibits are simply my firm's
14 billing records.

15 THE COURT: Okay.

16 MR. MORRIS: You know, we added Mr. Demo to the
17 witness list in case there was a need to establish a
18 foundation. That's the only thing he would testify to. I
19 don't know if there's an objection to those two exhibits,
20 because we hadn't had an opportunity to confer.

21 THE COURT: Any objection?

22 MR. PHILLIPS: Your Honor, we're not going to require
23 authenticity and foundation for -- we have the right, we
24 think, to say that they're not a ground -- we're not going to
25 challenge that they are the bills, and the bills say what they

1 say. We don't need Mr. -- we don't need a witness to
2 authenticate those exhibits. But we reserve all substantive
3 rights with respect to the effect of those exhibits.

4 THE COURT: All right. 54 and 55 are admitted.
5 (Debtor's Exhibits 54 and 55 are received into evidence.)

6 MR. MORRIS: And with that, Your Honor, the Debtor
7 rests.

8 THE COURT: Okay. All right. Respondents?
9 (Counsel confer.)

10 MR. PHILLIPS: If I could have a second?

11 THE COURT: Okay.

12 A VOICE: Sorry, Your Honor.

13 (Pause.)

14 MR. PHILLIPS: Your Honor, we have filed in our
15 witness and exhibit list, and I have to say I don't have the
16 number, but we'll get the docket entry number, but we have 44
17 exhibits. There's an objection to Exhibit #2, which is --
18 thank you -- it's Document 2411, Your Honor. Thank you.

19 THE COURT: Uh-huh.

20 MR. PHILLIPS: There is a pending objection to
21 Exhibit #2 which we have not resolved. There's no objection
22 to any other exhibit. But in reviewing our exhibit list, I
23 found that we had some -- some mistakes and duplications.

24 So, with respect to 2411, we would withdraw Exhibit 13,
25 14, and 29, and we would offer Exhibit 1, and then 30 through

1 44, with 13, 14, and 29 deleted.

2 THE COURT: Okay. So 1, 3 through 12, --

3 MR. PHILLIPS: Yes.

4 THE COURT: -- 15 through 28, and then 30 --

5 MR. PHILLIPS: And then 30 through 44.

6 THE COURT: -- through 44? Do you confirm, Mr.

7 Morris?

8 MR. MORRIS: Yes, Your Honor. The only objection we
9 have is to Exhibit #2.

10 THE COURT: And that's -- he's not offering that?

11 MR. MORRIS: Yeah.

12 MR. PHILLIPS: Not at this time, Your Honor.

13 THE COURT: Okay.

14 MR. PHILLIPS: We would have to have testimony about
15 that.

16 THE COURT: Okay. All right. So those are admitted.

17 MR. PHILLIPS: Okay.

18 (Mark Patrick's Exhibits 1, 3 through 12, 15 through 28,
19 and 30 through 44 are received into evidence.)

20 THE COURT: By the way, it looks like Exhibit 44 is
21 at a different docket number, Docket 2420. Correct? You have
22 --

23 MR. SBAITI: Your Honor, I believe Exhibit 44 is the
24 hearing transcript from the July approval hearing. At least
25 that's what it's supposed to be.

1 THE COURT: Okay.

2 MR. SBAITI: It was Exhibit 2 on the Debtor's list,
3 and then I think they took it off, so we had to add it.

4 MR. PHILLIPS: Oh, okay. I was looking -- oh, that's
5 right. They -- that's correct, Your Honor.

6 THE COURT: Okay.

7 MR. PHILLIPS: Exhibit 44 was added --

8 THE COURT: Okay.

9 MR. PHILLIPS: -- because the Debtor's withdrew it,
10 and so it was added in the second -- in the supplemental and
11 amended list. The -- the one that I was talking about was the
12 prior list.

13 THE COURT: Okay. So that's at Docket 2420?

14 MR. PHILLIPS: Yes.

15 THE COURT: You're not offering 45 or 46?

16 MR. PHILLIPS: No, I think we'd offer 45 and 46 as
17 well. I'm sorry.

18 THE COURT: Okay. Any objections, Mr. Morris?

19 MR. MORRIS: No, Your Honor.

20 THE COURT: Okay. So 45 and 46 are admitted as well.
21 They're at Docket Entry 2420.

22 (Mark Patrick's Exhibits 45 and 46 are received into
23 evidence.)

24 THE COURT: All right. Your witnesses?

25 MR. PHILLIPS: Your Honor, could we have five minutes

1 to just see what we're -- our plan is, and then we'll be back
2 at 4:00?

3 THE COURT: Okay. We'll be back at 4:00.

4 MR. PHILLIPS: Thank you.

5 THE CLERK: All rise.

6 (A recess ensued from 3:55 p.m. until 4:04 p.m.)

7 THE CLERK: All rise.

8 THE COURT: Please be seated. All right. Back on
9 the record in Highland. Mr. Phillips?

10 MR. PHILLIPS: Your Honor, with the introduction of
11 the Respondents -- CLO Holdco, DAF Fund, LP, and Mark Patrick,
12 those Respondents, and we consider Mark Patrick a Respondent
13 although not formally named as a Respondent because he is the
14 party who authorized the filing of the Seery motion -- we
15 rest.

16 THE COURT: You rest? Okay. Well, Mr. Morris,
17 closing arguments?

18 MR. MORRIS: How much time do I have?

19 THE COURT: You've got a lot more time than you
20 probably thought you were going to. You're under an hour.

21 MR. MORRIS: 42 minutes?

22 THE COURT: How much?

23 THE CLERK: 42 minutes.

24 THE COURT: 42 minutes? Feel free not to use it all.

25 MR. SBAITI: Out of curiosity, how long do we have?

1 THE COURT: You have a lot of time, which I hope you
2 won't use.

3 THE CLERK: Hour and twenty-five minutes or so.

4 MR. SBAITI: I was afraid it was going to be an hour
5 and twenty, so --

6 MR. PHILLIPS: No, not either.

7 MR. MORRIS: I don't suspect I'll use all the time.

8 THE COURT: Okay. Thank you.

9 MR. MORRIS: May I proceed?

10 THE COURT: You may.

11 CLOSING ARGUMENT ON BEHALF OF THE DEBTOR

12 MR. MORRIS: Good afternoon, Your Honor. John
13 Morris; Pachulski Stang Ziehl & Jones; for the Debtor. I'd
14 like to just make some closing remarks after the evidence has
15 closed.

16 This is a very, very important motion, Your Honor. I take
17 this stuff seriously. It's only the second contempt motion
18 I've ever brought in my life. I've never gone after another
19 law firm. But these facts and circumstances require it,
20 because my client is under attack, and these orders were
21 entered to prevent that.

22 It is serious stuff. There's no question in my mind,
23 there's no question the evidence showed, clear and
24 convincingly, beyond reasonable doubt, that they violated this
25 Court's order.

1 I started off with three very simple prongs. So simple
2 you'd think I'd remember them. Number one, was a court order
3 in effect? There is no dispute. The court order was in
4 effect.

5 Number two, did the order require certain conduct by the
6 Respondent? We believe it did. We heard an hour-long
7 argument styled as an opening statement, but it was really
8 argument and not an opening statement, about all the defects
9 in the order. But the one thing that is crystal clear in the
10 order are the words commence or pursue. You've been told many
11 times by the Respondent that nobody has commenced an action
12 against Mr. Seery. That is true. We all know what the word
13 commence means. We all know what the word pursue means.

14 I heard argument this morning that pursue means after a
15 claim is filed you pursue a case. That's the way lawyers talk
16 about it. But that doesn't make any sense, Your Honor,
17 because once you've commenced the action you've violated the
18 order. It's commence or pursue, it's in the disjunctive, and
19 you can't read out of the order the concept of pursuit by
20 making it an event that happens after the commencement,
21 because that's exactly what they're trying to do. They're
22 trying to read out of the order the word pursuit.

23 And I ask you to use very simple common sense. If filing
24 a motion for leave to amend a complaint to add Mr. Seery as a
25 defendant is not pursuit, what is? What is? There's nothing

1 left. You commence an action or you do something less than
2 commencing an action when you're going after the man. That's
3 what pursuit means. They're going after the man. And they
4 asked the District Court to do what they knew they couldn't.

5 Mr. Phillips is exactly right. I made the point about
6 Rule 15 because they knew they couldn't do it. I'm not
7 suggesting that they should have. I'm suggesting that the
8 reason that they didn't is because they knew they were -- they
9 were in a bad place. Because if they really just wanted to
10 name Mr. Seery as a defendant, they wouldn't have done it.
11 They knew commence was crystal clear.

12 What they're trying to do is claim that somehow there's an
13 ambiguity around the word pursuit. Does that make any sense
14 at all? Filing a motion for leave to amend the complaint.
15 And Mr. Patrick, to his credit, candidly admitted that if the
16 motion was granted, they were suing, yeah, as long -- as long
17 as the Sbaiti firm, you know, recommended it. That's what
18 would have happened.

19 Those orders that you signed, nothing, absolutely
20 meaningless from their point of view. They believed they were
21 wrong. They believed that they were overbroad. They believed
22 they were too narrow. They believed they were vague. They
23 believed they were without authority. They don't get to be
24 the gatekeeper. They want to be the gate -- that's this
25 Court's decision. That's why we went through all of the

1 processes that we did. And they just flagrantly said, I don't
2 agree. I don't agree because it's wrong this way and it's
3 wrong that way and it's wrong the other way, and therefore let
4 me go find a higher authority to validate my thinking. That's
5 not the way this process is supposed to work.

6 The independent directors and Mr. Seery relied on the
7 gatekeeper in accepting their positions. It was a quid pro
8 quo. Mr. Dondero agreed to the exact same provision, the
9 exact same gatekeeper provision in the January order that he
10 now complains about today, that the DAF complains about today.
11 Where were these people?

12 As the Court knows, nobody appealed either order. The
13 Debtor, the independent board, Mr. Seery expected that the
14 plain and unambiguous words would be honored and enforced. I
15 think that's fair. I think that's the way the process is
16 supposed to work.

17 Instead, we have games. We have these linguistic
18 gymnastics. We have statements that are too cute by half.
19 Mr. Dondero won't even admit that he appointed Mr. Scott back
20 in 2012. I couldn't even get him to do that, really, even
21 though the documents say it, even though Mr. Patrick says it.

22 I'll take the Respondents one at a time in a moment, but I
23 just want to deal with some of the more interesting arguments
24 they make. The order was vague because it didn't say you
25 can't seek leave from the District Court to amend your

1 complaint to add Mr. Seery. They said that that's what makes
2 the order vague.

3 Your Honor, if you had thought to put that language in,
4 you know what they would have done? They would have sued Mr.
5 Seery in New York State Supreme Court, where he lives, and
6 said, the order didn't say I couldn't do that. Where does it
7 end?

8 There's a reason why the order was crafted broadly to say
9 no commencement or pursuit without Bankruptcy Court approval.
10 You have to bring a colorable claim.

11 We heard an argument this morning that they couldn't
12 possibly have brought that motion for reconsideration first.
13 You know, the one they filed about eight hours after we filed
14 the contempt motion. They couldn't possibly have brought that
15 motion before the motion for leave to amend because somehow
16 they would have been estopped or they would have been found to
17 have waived some right.

18 How could it be that anybody reasonably believes that
19 complying with a court order results in a waiver of some
20 right? It just -- these are games. These are not good
21 arguments. And they certainly don't carry the day on a
22 contempt motion.

23 We've heard repeatedly, the District Court denied the
24 motion without prejudice, how have you been harmed? They
25 shouldn't be able to rely on the District Court's prudence to

1 protect themselves. The question shouldn't be, have you been
2 harmed since the District Court didn't grant the motion? No.
3 The question should be, were we harmed by the attempt to name
4 Mr. Seery a defendant, in violation of court orders, without
5 notice? Without notice.

6 I'm told they assumed that I'd be checking the dockets. I
7 wasn't checking the docket, Your Honor. I hadn't filed an
8 appearance in the case. And, in fact, if you look at the
9 exhibits, because I could pull it out, but we put in the
10 communications between the lawyers. The last communication
11 was from Mr. Pomerantz, and the last communication from Mr.
12 Pomerantz said, Don't do it or we're going to file a motion
13 for contempt. That's now in the evidence.

14 So, having sent that message, I wasn't going to check the
15 docket to see if they really were going to go ahead and do it.
16 I didn't think they would. And if they did, I certainly
17 thought I'd get notice of it. Nothing.

18 And, again, I don't really need to establish intent at all
19 in order to meet my burden of clear and convincing evidence of
20 a contempt of court, but I think it is relevant when the Court
21 hopefully finds liability and is considering damages, because
22 that's really the most important point I have to make right
23 now, is the Court needs to enforce its own orders, because if
24 the Court doesn't, or doesn't impose a penalty that's
25 meaningful, this is just going to continue. And Your Honor,

1 it's all in the record. Your Honor knows this. Mr. Daugherty
2 has gone through it. Right? Mr. Terry went through it. UBS
3 went through it. You've seen litigation now for a year and a
4 half. It's happening in New York, right, the Sbaiti firm is
5 reopening the Acis case. we've got this other lawsuit that's
6 filed by an entity with like a five-tenths of one percent
7 interest who's complaining about the SSP transaction that Mr.
8 -- that the Debtor engaged in. There's no end here.

9 We need the Court to pump the brakes. We need the Court
10 to exercise its authority. We need the Court to protect the
11 estate fiduciary that it approved.

12 It is true, Mr. Seery is not a trustee. But it is also
13 true that he is a third-party outsider who came into this case
14 with the expectation and the promise in an order that he
15 wouldn't be subjected to frivolous litigation, that this Court
16 would be the arbiter of whether claims could be pursued
17 against him. That was the code of conduct. That was the quid
18 pro quo. That was the deal that Mr. Seery made. It's the
19 deal that the board members made.

20 What gives these people the right to just say, your order
21 is wrong, and because I think your order is wrong I'm going to
22 go to the District Court, and if the District Court agrees,
23 too bad, and if the District Court doesn't agree, we'll be
24 back before Your Honor, and no harm, no foul? No. It can't
25 be. It can't be that that's the way this process works. It

1 just can't.

2 So, Your Honor, let me take the Defendants one at a time,
3 the Respondents one at a time. CLO Holdco and the DAF are
4 corporate entities. They've done what they've done. Mr.
5 Patrick, bless him, I think he's a lovely man. I don't think
6 he quite bargained for what he's getting right now, but
7 nevertheless he is where he is and he's willing to stand up
8 and be counted, and for that, at least, I admire his courage.
9 He's willing to say, I authorized those. But you know what?
10 It's a violation of the law, it's a violation of this Court's
11 order to file that motion, and so he has -- and he was very
12 candid today. He knew of the order. Right? He knew it was
13 in effect. He pointed out that it was in their papers.
14 Right?

15 They're trying to be cute, they're trying to thread this
16 needle, but it has no hole in it. They keep -- they keep
17 doing this. Well, maybe if we do it this way, maybe if we do
18 it -- no. The order was crystal clear.

19 The Sbaiti firm. They're probably fathers and husbands
20 and good people and I wish them no ill will, but this is
21 wrong. This is wrong. To come into a court you've never been
22 in before and in less than twelve days to jump the shark like
23 this in twelve -- in less than twelve days, because Mr.
24 Patrick said they weren't hired until April, and the complaint
25 was filed on the 12th.

1 We're told that they understood this was an overwhelming
2 case with two -- why don't you take your time? What was the
3 rush? Why not wait until the Defendant -- the Debtor appeared
4 in the action before rushing to do this?

5 It's bad conduct, Your Honor, and that's really a very
6 important point that I have to make, is that there's lots of
7 lawyers who are engaging in highly-questionable conduct here
8 that, from my perspective, goes well beyond the bounds of
9 zealous advocacy.

10 It's not aggressive lawyering. I love aggressive
11 lawyering. I really do. Respectful, honest -- and I don't,
12 you know, I don't want to say that they're dishonest people.
13 I don't mean to do that. But I think, I think they made a
14 gross error in judgment, and there's no question that they
15 violated this Court's order.

16 And then that leaves Mr. Dondero. I don't even know what
17 to say about his testimony, Your Honor. He pursued claims
18 against Mr. Seery. He thinks he's a rat. He's the one who
19 started the whole process. He's the one who put the bug in
20 Mark Patrick's ear. All of this is uncontested. Right?
21 Uncontested.

22 I don't have to go back in time. We can talk about what
23 happened to Grant Scott. It's a very sad story. Mr. Scott, I
24 think, did his honest best to do what he believed, on the
25 advice of counsel, was in the best interest of the DAF. And

1 Mr. Dondero, as you hear time and time again when he speaks
2 about Mr. Seery, it was inappropriate. He's the arbiter of
3 what's in the best interest of entities that other people
4 control. And they pay a price. And they pay a price. And so
5 Mr. Dondero felt it was his job, even though he tries to
6 distance himself from the DAF -- I have no responsibility, I
7 don't -- I'm not involved -- until, until somebody wants to
8 sue Seery and the Debtor. Then he'll go all in on that, no
9 matter how specious the claim may be.

10 The Debtor's not going to fold its tent because a motion
11 for leave to amend was denied without prejudice. That's not
12 the point. The point is that people need to respect this
13 Court, people need to respect the Court's orders, and those
14 that aid and abet or otherwise support the violation of court
15 orders ought to be held to account, Your Honor.

16 I have nothing further.

17 THE COURT: All right. Thank you. Respondents?

18 CLOSING ARGUMENT ON BEHALF OF THE RESPONDENTS

19 MR. SBAITI: Your Honor, the fact that we're here on
20 a motion for leave, and the motion for leave is what they're
21 saying is pursuing a claim under the Court's order, and then
22 you hear that the mere act of investigating a claim against
23 Mr. Seery is also pursuing a claim, this goes to the infinite
24 regression problem with this word pursue the way they want to
25 construe it, Your Honor. Asking for permission is not

1 pursuing a claim and can't be the definition of pursuing a
2 claim because it's not doing anything other than asking for
3 permission.

4 We didn't file a suit. We didn't commence a suit. I
5 think that's established. We did not pursue a claim. Mr.
6 Morris ignores, I think, the very commonsensical aspect that
7 we put out in the opening, which is that the reason pursue --
8 and sometimes the language in these types of orders is,
9 instead of pursue, it's maintain -- but the reason that word
10 is there is because sometimes the case has already been
11 started when the order is entered. And so to pursue a claim,
12 *i.e.*, one that's already been filed as of the date of the
13 order, that would be lost if the commencement of that claim
14 hadn't happened until after the -- until the -- if the
15 commencement happened before the order was filed. That's the
16 --

17 THE COURT: Okay. So are you saying it's a
18 sequential thing?

19 MR. SBAITI: I'm not sure I understood your question,
20 Your Honor. I'm sorry.

21 THE COURT: Well, I'm trying to understand what it is
22 you're saying about how pursue should be interpreted.

23 MR. SBAITI: Sure.

24 THE COURT: I think you're saying you have to -- you
25 can either have -- well, we've got a prohibition on commencing

1 an action.

2 MR. SBAITI: Yes.

3 THE COURT: And then the separate word pursue, I
4 think you're saying that must refer to you already have an
5 action that's been commenced and you're continuing on with it.
6 Is that what you're saying?

7 MR. SBAITI: Yes, Your Honor.

8 THE COURT: Then why not use the word continue?

9 MR. SBAITI: Well, Your Honor, the choice of --

10 THE COURT: Kind of like 362(a) of the Bankruptcy
11 Code, you know, is worded.

12 MR. SBAITI: Well, Your Honor, the choice of the
13 wording of pursue at that point, Your Honor, I believe ends up
14 being ambiguous, because by filing the motion here that would
15 be pursuing a claim under that definition. So before I got
16 permission to pursue a claim, I've got to pursue a claim.
17 That's the problem that they have with the words that they're
18 trying to get you to adopt, or the meaning of the words
19 they're trying to get you to adopt.

20 If I came to this Court and said, Judge, I need
21 permission, I need leave to file suit against Mr. Seery, and
22 then the question is, well, you're not allowed to seek leave
23 because that's pursuing the claim, it's infinitely regressive.
24 And in fact, his closing argument just proved how it's
25 infinitely regressive.

1 THE COURT: Okay. Let me -- I'm not following this
2 infinitely regressive or whatever the term was.

3 MR. SBAITI: Yes.

4 THE COURT: Just answer this very direct question.
5 Why did you not file a motion for leave in the Bankruptcy
6 Court? That would have clearly, clearly complied with the
7 July order.

8 MR. SBAITI: Your Honor, I believe we explained this
9 in the opening. I took a stab at it. Mr. Bridges took a stab
10 at it. We did not believe coming here and asking for leave
11 and asking for -- for Your Honor to do what we don't believe
12 Your Honor can do, would effectuate an estoppel or a waiver,
13 which we didn't think was in the best interest of our client
14 to have. Your Honor, this happens -- I don't believe this is
15 the --

16 THE COURT: Okay. Connect the dots. Make that clear
17 as clear can be for me. You file a motion for leave --

18 MR. SBAITI: Yes.

19 THE COURT: -- to file this District Court action
20 against the Debtor and Seery, and if I say yes, everything is
21 fine and dandy from your perspective. If I say no, tell me
22 again what your estoppel argument is.

23 MR. SBAITI: Your Honor, the key question is whether
24 us putting the Court's ability to decide colorability and the
25 Court's gatekeeper functions, for us to invoke those functions

1 concerned us because there's case law that says that that
2 effectuates an estoppel. And so we don't get our chance in
3 front of an Article III judge to make that in the first
4 instance.

5 THE COURT: Okay. Tell me what cases you're talking
6 about and the exact context of those cases.

7 MR. SBAITI: Your Honor, I would have to defer to my
8 partner on this one, Your Honor.

9 THE COURT: Okay.

10 MR. SBAITI: So, --

11 THE COURT: Because I'm just letting you know --

12 MR. SBAITI: Yes.

13 THE COURT: -- I am at a complete loss. I'm at a
14 complete loss understanding what you're saying. I am.

15 MR. SBAITI: Well, Your Honor, the --

16 THE COURT: I don't understand. If you have followed
17 the order to the letter and I tell you no, --

18 MR. SBAITI: Then --

19 THE COURT: -- what, you're saying you were worried
20 you'd be estopped from appealing my order to the District
21 Court and saying abuse of discretion or invalid order in the
22 first place? You'd be estopped from taking an appeal?

23 MR. SBAITI: No, Your Honor. We wouldn't be estopped
24 from taking an appeal.

25 THE COURT: Then why didn't you follow the letter of

1 the order?

2 MR. SBAITI: For one thing, Your Honor, asking the
3 District Court made sense to us, given the order and given our
4 understanding of the law. Certainly, we had other options, as
5 Your Honor is pointing out. We could have come here. Our
6 read of the law, our understanding of what we were doing, made
7 it -- put us in, like I said, put us in the sort of
8 jurisdictional and paradoxical position.

9 THE COURT: This is your chance to tell me exactly
10 which law you think applies here. What case? What statute?

11 MR. SBAITI: Your Honor, like I said, I don't have
12 those at the moment.

13 THE COURT: Why not? Your whole argument rides on
14 this, apparently.

15 MR. SBAITI: Well, Your Honor, I don't know that our
16 whole argument rides on that.

17 THE COURT: Okay.

18 MR. SBAITI: I mean, our argument rides on we don't
19 think we violated the letter of the order. I think that's
20 really what I'm -- what we're here to say, is that we didn't
21 commence a lawsuit and we didn't pursue a claim by filing for
22 leave in the District Court, just like filing for leave in
23 this Court would not be pursuing a claim. It would be filing
24 for leave.

25 THE COURT: I agree. Filing a motion for leave in

1 this Court would be exactly what the order contemplated.

2 MR. SBAITI: I understand, Your Honor.

3 THE COURT: What you did is not exactly what the
4 order contemplated.

5 MR. SBAITI: Your Honor, but we're -- we're moving
6 back and forth between two concepts. One, your question is
7 why didn't we file for leave?

8 THE COURT: Uh-huh.

9 MR. SBAITI: And the answer to that, I've tried to
10 explain. And if we -- if you'd like us to bring up the case
11 law or to give you a better articulation of our concern, I'm
12 happy to defer to my partner.

13 What I'm really here to say, Your Honor, is a very simple
14 point, though. Just because we didn't file for leave here and
15 we filed for leave in the District Court doesn't mean we
16 violated your order, and that's the point I'm trying to make,
17 Your Honor. And I think that's the simplest point I can make.
18 Asking the Article III judge for leave to amend, for leave to
19 amend to add Mr. Seery, doesn't violate, facially, at least as
20 we read it, Your Honor's order. It's not commencing a suit
21 and it's not -- it's not pursuing a claim against him. It's
22 all preliminary to pursuing a claim against him, because a
23 claim hasn't even been filed.

24 The judge could have -- the judge could have -- the
25 District Court could have denied it, the District Court could

1 have referred it down here, the District Court could have
2 decided part of it and then asked Your Honor to rule on some
3 portion of it. There are innumerable ways that could have
4 gone. That fork -- those forks in the road is precisely why
5 we say this is not pursuing the claim. Otherwise, where does
6 it stop?

7 Does pursuing a claim happen just when we file the motion
8 for leave? Why didn't it happen when we started the
9 investigation? If pursuing a claim means having the intent
10 and taking steps towards eventually filing a lawsuit, that's
11 the point that I'm making that it is infinitely regressive,
12 and that's exactly what Mr. Morris argued to you.

13 He said Mr. Dondero, by merely speaking to me, is pursuing
14 a claim and that violates your order. Speaking to me. Even
15 if we had never filed it. Speaking is pursuing a claim.

16 THE COURT: I don't agree with that, for what it's
17 worth.

18 MR. SBAITI: Okay. But that was his argument. I'm
19 just responding to it.

20 THE COURT: Okay.

21 MR. SBAITI: And if that's not pursuing a claim,
22 filing a motion for leave likewise wouldn't be pursuing a
23 claim. I understand it's an official act in a court, but we
24 did it in a Court that is an adjutant to this Court. This
25 Court is an adjutant to that Court. It's the Court with

1 original jurisdiction over the matter. So we didn't go to New
2 York. We didn't go to the state court in New York where I
3 learned Mr. Seery lives. We came to the Northern District of
4 Texas, understanding that this Court and this Court's orders
5 had to be -- had to be addressed. And that's the very first
6 thing we did. We asked the Court to address it.

7 That judge could either decide to send it down here, which
8 is normally what I think -- what we understood would happen.
9 So it's not like we were avoiding it. But we wanted to invoke
10 the jurisdiction which we, as the Plaintiff, we believe we had
11 the right to invoke. We're allowed to choose our forum. So
12 that's the forum we chose for the primary case, which there's
13 not a problem, no one's raised an issue with us filing the
14 underlying lawsuit.

15 Adding Mr. Seery to that lawsuit and filing a motion for
16 leave in the same court where we actually had the lawsuit,
17 knowing that it might get -- that might get decided or
18 referred in some way, doesn't strike me as being anything
19 improper, because he didn't get sued and we don't know what
20 Judge Boyle would have said had the motion gone forward. And
21 for them to speculate and to say that, well, this is exactly
22 the type of thing you have to protect against, I completely
23 disagree.

24 The case law that they cited for you on these -- on most
25 of these orders really do discuss the fact that you have

1 somebody who is actually protecting the underlying property of
2 the Debtor. This claim comes from a complete third party that
3 Mr. Seery himself has admitted under oath he owes a fiduciary
4 duty to. Two third parties. One is an investor of a fund
5 that he manages, and one to a fund that the Debtor, with Mr.
6 Seery as the head of it, was an advisor for up until recently.

7 Those fiduciary duties exist. We felt like there was a
8 valid claim to be brought against Mr. Seery. And the only
9 reason -- and he says this like it's a negative; I view it as
10 a positive -- the reason he wasn't named is because of Your
11 Honor's orders. And so we asked a Court, the Court with
12 general jurisdiction, to address it for us or to tell us what
13 to do. And I don't see how that is a violation of this
14 Court's order, nor is it contemptuous of this Court's order.

15 If every time one of these issues came up it was a
16 contempt of the court that appointed a trustee, we'd see a lot
17 more contempt orders.

18 Interestingly, the cases that were thrown out to you in
19 the opening argument by the other side, for example, *Villages*
20 [sic] *v. Schmidt*, was a trustee case, but not one that
21 involved a sanction. And the trustee case specifically in
22 that case held that the Barton Doctrine didn't have an
23 exception for *Stern* cases, whereas the cases we cited to you,
24 *Anderson*, for example, in the Fifth Circuit, which is 520 F.2d
25 1027, expressly held that Section 959 is an exception to the

1 Barton Doctrine.

2 And my partner, Mr. Bridges, can walk through the issues
3 that we had on the enforceability of the order, but all -- to
4 me, all of that is sort of a secondary issue because, *prima*
5 *facie*, we didn't violate this order. I understand it may
6 irritate the Debtor and may raise questions about why the
7 motion wasn't filed here versus the District Court. But it
8 was a motion for leave. In order to sanction us, Your Honor
9 would have to find that asking for permission is sanctionable
10 conduct in the gatekeeper order. Even if we ask the wrong
11 court. Simply asking the wrong court is sanctionable, not
12 knowing what that court would have done, not knowing what that
13 court's mindset was, not even having the benefit of the
14 argument. And that's, I guess, where this bottom -- the
15 bottom line is for me.

16 The evidence that they put on for you, Your Honor.
17 Everything you heard was evidence in the negative. You know,
18 they talk about the transition from Mr. Dondero to Mr. Scott
19 and Mr. Scott to Mr. Patrick, but if you actually look at the
20 evidence he wants you to see and he wants you to rule on, it's
21 the evidence that wasn't there. It's the evidence that Mr.
22 Dondero had no control. In fact, I believe that was the basis
23 he argued for why there should be no privilege. And all he
24 said is that he was promoting it.

25 But the fact of the matter is, like I said, all of that is

1 secondary to the core issue that we didn't violate the order.
2 We didn't take steps to violate the order. We took steps to
3 try to not violate the order. And they want you to punish us
4 to send a message. Even used words like the Court needs to
5 enforce its own orders. And he did that as a transition away
6 from the idea that there were no damages, Your Honor, and I
7 think that has implications.

8 And then he said you have to enforce a meaningful penalty.
9 Well, Your Honor, I don't think that is the purpose of these
10 sanctions. These sanctions are supposed to be remedial,
11 according to the case law, according to the case law that they
12 cite. So a meaningful --

13 THE COURT: Coercive or remedial.

14 MR. SBAITI: Sorry?

15 THE COURT: Coercive or remedial. Civil contempt.

16 MR. SBAITI: Sure, Your Honor. But usually coercive
17 sanctions require someone to do something or they are
18 sanctioned until they do it.

19 THE COURT: Coerced compliance. Coerced compliance
20 --

21 MR. SBAITI: Yes.

22 THE COURT: -- with an existing order.

23 MR. SBAITI: Yes.

24 THE COURT: Uh-huh.

25 MR. SBAITI: The last thing, he says you have to

1 protect the estate of the fiduciary and his expectation -- I
2 believe he's talking about Mr. Seery -- his expectation that
3 the Court would be the gatekeeper. And Your Honor, that
4 argument rings a little bit hollow here, given that what
5 they're really saying is that we should have come here first
6 and asked for permission. But that insinuates that, by coming
7 here, the case is dead on arrival, which I don't think is the
8 right argument.

9 I think the issue for us has been, who do we have to ask
10 and who can we ask to deal with the Court's gatekeeper order?
11 I believe we chose a court, a proper court, a court with
12 jurisdiction, to hear the issue and decide the issue. Your
13 Court's -- Your Honor's indication of the jurisdiction of this
14 Court we believed invoked the District Court's jurisdiction at
15 the same time.

16 And so the last thing is he said -- the last thing, and
17 getting back to the core issue, is Mr. Morris wants you to
18 believe that we intended to violate the order, and now, as an
19 afterthought, we're using linguistic gymnastics to get around
20 all of that. But it's not linguistic gymnastics. Linguistic
21 gymnastics is saying that pursue means doing anything in
22 pursuit of a claim. That's a little -- I believe that's
23 almost a direct quote. They're chasing the man. Well, that's
24 the infinite regression that I talked about, Your Honor, that
25 it's going to be impossible in any principled way to reconcile

1 Mr. Morris's or the Debtor's definition of pursue with any
2 logical, reasonable limitation that is readable into the
3 order, Your Honor.

4 And I'm going to defer to my partner, Mr. Bridges -- oh,
5 go ahead.

6 THE COURT: I'm going to stop you. I mean, we have
7 the linguistic argument. But how do you respond to this?

8 MR. SBAITI: Sure.

9 THE COURT: What if I tell you, in my gut, this
10 appears to be an end run? An end run. I mean, I'm stating
11 something that should be obvious, right? An end run around
12 this Court. This Court spent hours, probably, reading a
13 motion to compromise issues with HarbourVest, issues between
14 the Debtor and HarbourVest. I had objections. An objection
15 from CLO Holdco that was very document-oriented, as I recall.
16 Right of first refusal. HarbourVest can't transfer its 49.98
17 percent interest in HCLOF, right? Talk about alphabet soup.
18 We definitely have it.

19 MR. SBAITI: Yes.

20 THE COURT: Without giving CLO Holdco the first right
21 to buy those assets. Read pleadings. Law clerk and I stay up
22 late. And then, you know, we get to the hearing and there's
23 the withdrawal -- we heard a little bit about that today --
24 withdrawal of the objection. We kind of confirmed that two or
25 three different ways on the record. And then I remember going

1 to Mr. Draper, who represents the Dugaboy and Get Good Trusts.
2 You know, are you challenging the legal propriety of doing
3 this? And he backed off any objection.

4 So the Court ended up having a hearing where we went
5 through what I would call the standard 9019 prove-up, where we
6 looked at was it in the best interest, was it fair and
7 equitable given all the risks, rewards, dah, dah, dah, dah.
8 You know, HarbourVest had initially, you know, started at a
9 \$300 million proof of claim, eye-popping, but this all put to
10 bed a very complicated claim.

11 MR. SBAITI: Yeah.

12 THE COURT: Tell me something that would make me feel
13 better about what is, in my core, in my gut, that this is just
14 a big, giant end run around the Bankruptcy Court approval of
15 the HarbourVest settlement, which is not on appeal, right?
16 There are a gazillion appeals in this case, but I don't think
17 the HarbourVest --

18 A VOICE: It is on -- it is on appeal, Your Honor.

19 THE COURT: Is it? Oh, it is on appeal? Okay. So I
20 may be told --

21 MR. SBAITI: I didn't know.

22 THE COURT: I may be told, gosh, you got it wrong,
23 Judge. You know, that happens sometimes.

24 So, this feels like an end run. You know, the appeal is
25 either going to prevail or not. If it's successful, then, you

1 know, do you really need this lawsuit? You know, I don't --
2 okay. Your chance.

3 MR. SBAITI: Thank you, Your Honor.

4 THE COURT: Uh-huh.

5 MS. SBAITI: Your Honor, this wouldn't be the first
6 case where finality or where there was a settlement -- I'm not
7 familiar as well with bankruptcy, but certainly in litigation
8 -- where the settlement then reveals -- well, after a
9 settlement is done, after everyone thinks it's done, some new
10 facts come to light that change people's views about what
11 happened before the settlement or before the resolution. And
12 that's what happened here, Your Honor. This is what we've
13 pled. And this is what we understand.

14 There were the instances of Mr. Seery's testimony where he
15 testified to the value of the HarbourVest assets. I believe,
16 as I recall, he testified in I believe it's the approval
17 hearing that Your Honor is talking about that the settlement
18 gave HarbourVest a certain amount of claims of I think it's,
19 Series 8 and then Series 9 claims, and that those were
20 discounted to a certain dollar value that he quantified as
21 about \$30, \$31 million. And the way he ratified and justified
22 the actual settlement value, the actual money or value he was
23 conferring on HarbourVest, given the critique of HarbourVest
24 claims that he was settling, is he explained it this way. He
25 said \$22-1/2 million of this whole pot that I'm giving them

1 pays for the HarbourVest -- HarbourVest's interests in HCLOF
2 -- it's alphabet soup again -- and Highland CLO Funding,
3 Limited. And so it's the other \$9 million that's really
4 settling their claims. And given the amount of expense it's
5 going to take, so on and so forth, \$9 million seems like a
6 reasonable amount to settle them with, especially since we're
7 just giving them claims.

8 So that \$22-1/2 million everyone apparently took to the
9 bank as being the value, including CLO Holdco at the time,
10 because they didn't have the underlying valuations. Highland
11 was supposed to give the updated valuations.

12 So, fast-forward a couple of months -- and this is what
13 we've played in our lawsuit, Your Honor; this is why I don't
14 think it's an end run -- we pled in our lawsuit just a couple
15 months later Highland -- I believe some of the people that
16 worked at Highland started leaving, according to some
17 mechanisms that I saw where Highland didn't want to keep all
18 the staff and so the staff was migrated to other places. And
19 one of those gentlemen, I believe Mr. Dondero referred to him
20 as a gentleman named Hunter Covitz, and Hunter Covitz, who's
21 also an investor in HCLOF, he owns a small piece of HCLOF, he
22 had the data, he had some of the information that showed that,
23 actually, in January, when Mr. Seery said that the HarbourVest
24 settlement was worth 22 -- excuse me, the HarbourVest
25 interests in HCLOF were worth \$22-1/2 million, that they're

1 actually worth upwards of \$45 million.

2 And so that information, Your Honor, we believe gives us a
3 different -- a different take on what happened and what was
4 supposed to happen. This is strictly about the lack of
5 transparency.

6 THE COURT: Okay. Assuming --

7 MR. SBAITI: Yeah.

8 THE COURT: -- I buy into your argument that this is
9 newly-discovered evidence --

10 MR. SBAITI: Yes.

11 THE COURT: -- CLO Holdco would not have had reason
12 to know -- I guess that's what you're saying, right?

13 MR. SBAITI: I'm saying they -- they didn't know.

14 THE COURT: That they didn't know.

15 MR. SBAITI: Uh-huh.

16 THE COURT: And didn't have reason to know. I'm
17 trying to figure out who's damaged here.

18 MR. SBAITI: Well, CLO Holdco, my client, is damaged,
19 Your Honor.

20 THE COURT: How?

21 MR. SBAITI: Because one of the aspects of the -- of
22 Highland, one of the issues under, excuse me, of Highland's
23 advisory, is that it has a fiduciary duty. And that fiduciary
24 duty, at least here, entails two, if not, three prongs. The
25 first prong is they have to be transparent. You can't say --

1 THE COURT: How is -- you know, I know a lot about
2 fiduciary duties, believe it or not. How is CLO Holdco harmed
3 and the DAF harmed?

4 MR. SBAITI: Because, Your Honor, they lost out on an
5 investment opportunity to buy the piece of -- the HarbourVest
6 piece. They would have been able to go out and raise the
7 money. They had the opportunity --

8 THE COURT: Okay.

9 MR. SBAITI: They would have had the opportunity to
10 make a different argument.

11 THE COURT: What you're saying, you're saying, if
12 they had known what they didn't have reason to know, that it
13 was worth, let's say, \$45 million, that they would have gone
14 out and raised money and said, oh, we do want to exercise this
15 right of first refusal that we decided we didn't have and gave
16 in on, we're going to press the issue and then outbid the \$22
17 million, because we know it's worth more? Is that where
18 you're going? I'm trying to figure out where the heck you're
19 going, to be honest.

20 MR. SBAITI: That's -- Your Honor, I'd push back on a
21 little of the phrasing, only because the way these duties --
22 the way we understand the SEC's duties work when you're an
23 investment advisor is you have a transparency obligation and
24 an obligation --

25 THE COURT: Yes. Yes.

1 MR. SBAITI: -- not to divert these. So, yes, CLO
2 Holdco would have at least had the opportunity and been
3 offered the opportunity, which it could have taken advantage
4 of, to, if the assets were really on the block for \$22-1/2
5 million, they should have been able to buy their percentage
6 pro rata share of that \$22-1/2 million deal. I mean, in a
7 nutshell, that's -- that's where we believe we've been harmed.
8 And we believe that the obfuscation of those values and, to a
9 certain extent, the misrepresentation of those values in the
10 settlement is not cleansable by the argument, well, you should
11 have asked.

12 Well, you should have asked is fine in normal litigation,
13 but when the person you should have asked actually owes you a
14 positive duty to inform, we believe that the should-have-asked
15 piece doesn't really apply and there's -- and that's, that's
16 the basis of our case.

17 So it's not an end run around the settlement, Your Honor.
18 I think I opened with we're not trying to undo the settlement.
19 We're not saying HarbourVest has to take its interest back.
20 We're not saying the settlement has to go on. We're not even
21 saying any of the things that happened in Bankruptcy Court
22 need to change. But Section 959 is pretty clear that this is
23 management of third-party property --

24 THE COURT: I guess -- okay. Again, rabbit trail,
25 maybe. But CLO Holdco still owns its same 49.02 percent

1 interest that it did before this transaction. So if there's
2 value galore in HCLOF, it still has its 49.02 percent
3 interest. What am I missing?

4 MR. SBAITI: Oh, I think Your Honor's assuming that
5 HCLOF bought the piece back from HarbourVest. It didn't.

6 THE COURT: No, I'm not.

7 MR. SBAITI: Oh.

8 THE COURT: I'm not assuming that.

9 MR. SBAITI: Well, --

10 THE COURT: I know that now the Debtor has, what,
11 fifty point, you know, five percent of HCLOF, whereas it only
12 had, you know, a fraction.

13 MR. SBAITI: Point six-ish. Yeah.

14 THE COURT: Point six-ish, and HarbourVest had 49.98.

15 MR. SBAITI: Right.

16 THE COURT: So, again, please educate me. I'm really
17 trying to figure out how this lawsuit isn't just some crazy
18 end run around a settlement I approved. And moreover, what's
19 the damages?

20 MR. SBAITI: Well, Your Honor, --

21 THE COURT: What's the damages? CLO Holdco still has
22 its 49.02 percent interest in HCLOF.

23 MR. SBAITI: Your Honor, again, --

24 THE COURT: What am I missing? I must be missing
25 something.

1 MR. SBAITI: I think so, Your Honor.

2 THE COURT: What?

3 MR. SBAITI: The damages is the lost opportunity, the
4 lost opportunity to own more of HCLOF.

5 THE COURT: Oh, it could have owned the whole darn
6 thing?

7 MR. SBAITI: I could have owned 90 -- whatever 49
8 plus 49.98, 98.98 percent.

9 THE COURT: But --

10 MS. SBAITI: Or some pro rata portion.

11 THE COURT: But Mr. Seery had some information that
12 you think he was holding back from CLO Holdco that CLO Holdco
13 had no reason to know?

14 MR. SBAITI: Yes, Your Honor. The -- the -- what he
15 testified to that the value of those assets, excuse me, the
16 value of the HarbourVest interests in HCLOF or its share of
17 the underlying assets being \$22-1/2 million was either, one,
18 intentionally obfuscated, or, two, and I don't think this
19 excuses it at all, he simply used ancient data and simply
20 never updated himself, not for the Court and not for any
21 representations to the investors, who he himself testified
22 under oath in this Court that he has a fiduciary duty to under
23 the Investment Advisers Act.

24 THE COURT: This could get very --

25 MR. SBAITI: So that's injury to my client, Your

1 Honor.

2 THE COURT: This could get really dangerous. Maybe

3 --

4 MR. SBAITI: I'm sorry.

5 THE COURT: This could get really dangerous. Maybe I
6 should cut off where I'm going on this.

7 MR. SBAITI: Okay.

8 THE COURT: Of course, someone dangled it out there
9 in a pleading. You know where I'm going, right?

10 MR. SBAITI: I'm not sure I do, Your Honor.

11 THE COURT: Hmm. I do read the newspaper, but
12 someone put it in a pleading. HCLOF owns MGM stock, right?
13 Is that what this is all about? Is that what this is all
14 about? Or shall we not do this on the record?

15 MR. SBAITI: Well, Your Honor, this has nothing -- I
16 don't -- I don't think this has anything to do with the MGM
17 stock one way or the other.

18 THE COURT: You don't? OH?

19 MR. SBAITI: Your Honor, my charge as a counsel for
20 the DAF is pretty straightforward. We looked at the claims.
21 We looked at the newly-discovered information. We talked to
22 the people who had it, Your Honor. That was our
23 investigation. We put together a complaint. We believed that
24 we had a good basis to file suit, despite Your Honor's -- the
25 settlement approval. We expressly, because we understand how

1 finality is so critical in a bankruptcy context, we expressly
2 didn't ask for rescission. We expressly didn't ask for
3 anything that would undo the settlement.

4 Asking for damages because of how the settlement happened,
5 through no fault of the Court's, of course, but asking for
6 damages is not, at least not as I see it, an end run around
7 the Court's settlement, and it's a legitimate claim. And I
8 don't think this is far from the first time that new evidence
9 has come up that's allowed someone to question how something
10 was done that actually -- that actually damaged them.

11 THE COURT: Usually, they come in for a motion to
12 reopen evidence to the court who issued the order approving
13 the settlement.

14 MR. SBAITI: Well, Your Honor, I mean, that's --

15 THE COURT: Newly-discovered evidence.

16 MR. SBAITI: That would be the case in a final
17 judgment, Your Honor. But, you know, our understanding of the
18 way the settlement worked was that that was not necessarily
19 going to be -- not the direction anybody wanted to go, but
20 seeking damages on a straight claim for damages, which we're
21 allowed to seek, which I think is our prerogative to seek, we
22 went that direction.

23 THE COURT: Okay. Okay.

24 MR. SBAITI: But this --

25 THE COURT: My last question.

1 MR. SBAITI: Yes, Your Honor.

2 THE COURT: Again, I have to know. You have filed
3 some sort of pleading to reopen litigation against Acis in New
4 York? I'm only asking this because it's part of what's going
5 on here. What is going on here?

6 MR. SBAITI: Your Honor, that's a -- that's a
7 separate lawsuit, and it's not to reopen litigation against
8 Acis. It deals with post-plan confirmation mismanagement by
9 Acis.

10 THE COURT: Oh, okay. Okay.

11 MR. SBAITI: Yeah.

12 THE COURT: All right.

13 MR. SBAITI: But I believe there's a motion in front
14 of Your Honor, just to -- that gave notice that the suit was
15 filed, but I believe Mr. -- well, a bankruptcy lawyer filed
16 it. I don't know.

17 THE COURT: A motion or a notice? I don't know.

18 MR. SBAITI: I don't know, Your Honor. That's above
19 my paygrade.

20 THE COURT: I have not seen it. Okay?

21 MR. SBAITI: Okay.

22 THE COURT: Maybe it's there, but no one has called
23 it to my attention.

24 MR. SBAITI: With the Court's permission, I'm going
25 to yield time to Mr. Bridges.

1 THE COURT: Okay. Mr. Bridges?

2 CLOSING ARGUMENT ON BEHALF OF THE RESPONDENTS

3 MR. BRIDGES: Thank you, Your Honor. I'm grateful
4 that you asked most of those questions to Mr. Sbaiti. I would
5 not have been able to answer them. The one I can answer is
6 the one about judicial estoppel. Apparently, I did a pretty
7 lousy job earlier. I think I'm prepared to do a better job
8 now.

9 The case law I'd like to refer you to is the Texas Supreme
10 Court's 2009 decision in *Ferguson v. Building Materials*, 295
11 S.W.3d 642. And this was my concern and my issue, perhaps
12 because I used to teach it and so it was at the front of my
13 mind. But contrary to what you would think and what you said
14 earlier, it's not your ruling against us that would create a
15 judicial estoppel problem. It's if you ruled in our favor.
16 And I know that seems weird. Let me explain.

17 The two things that have to take place for there to be
18 judicial estoppel are, first, successfully maintaining a
19 position in one proceeding, and then taking an inconsistent
20 position in another. And Your Honor, what we talked about
21 earlier is the notion that your July order forecloses the key
22 claim that Mr. Sbaiti was just describing, that Mr. Seery
23 should have known. Not that he was grossly negligent or did
24 intentional wrong, but that he breached fiduciary duties
25 because he should have known and should have disclosed.

1 And if your order forecloses that and we come and convince
2 you that we nonetheless have colorable claims, colorable
3 claims of gross negligence or willful wrongdoing, that we
4 ultimately are unable to prove, our lawsuit could fail, even
5 though we had proved -- in the lawsuit we had proved he should
6 have known and that he breached fiduciary duties, but we would
7 be estopped, having succeeded from coming here and asking in
8 compliance with the order and its colorability rule, that we
9 would be estopped from then saying that this Court lacked the
10 authority to have issued that order in the first place, to
11 have released the claim on the mere breach of fiduciary duty
12 or ordinary negligence. That's the inconsistency that I was
13 concerned about.

14 By coming here rather than trying to make our objection
15 and our position known without submitting to the foreclosure
16 of that claim that is, in many ways, the most important, the
17 headliner from our District Court complaint, is the concern,
18 Your Honor. And frankly, if Your Honor's order does foreclose
19 that, then we're in serious trouble. That's the claim that
20 we're trying to preserve.

21 But Your Honor, I don't think it was in anyone's
22 contemplation in July of 2000 that what that order would do is
23 terminate -- 2020; sorry, Your Honor -- in July of 2020, that
24 that order would terminate future claims that might arise
25 based on future conduct that had not yet happened in Mr.

1 Seery's role. Not in his role as a manager of the Debtor's
2 property, but in his role as a registered investment advisor
3 on behalf of his clients and their property. And that is the
4 concern that the judicial estoppel argument is about.

5 THE COURT: I still don't understand. I'm very well
6 aware of judicial estoppel, the old expression, you can't play
7 fast and loose with the court. Take one position in one
8 court, you're successful, and then take another position in
9 another court. That's the concept.

10 MR. BRIDGES: Coming here --

11 THE COURT: How is this judicial estoppel if you had
12 done what I think the order required and asked this Court for
13 leave? What -- and I said fine, you have leave. Where's the
14 judicial estoppel problem?

15 MR. BRIDGES: If you say fine, you have leave, but
16 that leave is only, as the order states, because we have
17 colorable claims of gross negligence, colorable claims of
18 intentional wrongdoing, what happens to our mere negligence
19 and mere breach of fiduciary duty claims? Are they
20 foreclosed? The order on its face --

21 THE COURT: Well, I would interpret the order to be
22 yes, and then you could appeal me, and the Court would either
23 say it's too late to appeal that because you didn't appeal it
24 in July 2020, or fine, I'll hear your appeal. Where's the
25 estoppel?

1 MR. BRIDGES: Your Honor, our claims that this Court
2 lacks the authority either to have made that order in the
3 first place or the jurisdiction to rule on colorability now
4 because of Section -- the mandatory abstention provision,
5 whose section number I've now lost. That if we come to you
6 and ask you to rule on those things, have we not thereby
7 waived on appeal our claim that you couldn't rule in the first
8 place on those things?

9 That is what our motion for leave in the District Court
10 argues, is that there's -- there are jurisdictional
11 shortcomings with your ability to decide what we're asking
12 that Court to decide. And Your Honor, by coming here first
13 and then appealing, that's what we fear we would have lost.
14 And instead of coming here and appealing, what we -- what we
15 would have done, in the alternative, I guess, would be to come
16 here and ask you not to rule but move to withdraw the
17 reference of our own motion.

18 That two-step, filing here and filing a motion to withdraw
19 the reference on the thing we filed here, we didn't think was
20 required, nor could we find any case law or rule saying that
21 that was appropriate.

22 THE COURT: Okay.

23 MR. BRIDGES: These are not games, Your Honor. We
24 were not trying to play games. We aren't bankruptcy court
25 lawyers. We're not regularly in front of the Bankruptcy

1 Court. So the notion why didn't we come here first isn't
2 exactly at the top of our mind. The question for trial
3 lawyers typically is, where can we file this, what are the
4 permissible venues, not why don't we come to Bankruptcy Court?
5 Especially when your order appears to say that causes of
6 action that don't rise to the level of gross negligence or
7 intentional wrongdoing are already foreclosed.

8 Your Honor, the January order, I think I have to just
9 briefly address again, even though I don't understand why it
10 makes a difference. Apparently, counsel thinks it makes a
11 difference because Mr. Dondero apparently supported it in some
12 way. Our position is, for whatever difference it makes, the
13 January versus the July, we don't believe there's anything in
14 the District Court complaint putting at issue Mr. Seery's role
15 as a director, so we don't understand how that order is
16 implicated.

17 Again, I'm not sure that matters at all. I'm not raising
18 it as a defense. I'm just telling Your Honor this is all
19 about the July order, from our perspective. Certainly, the
20 July order puts his role as a CEO -- certainly, the District
21 Court case puts his role as a CEO at issue, and that's what
22 the July order is about.

23 Your Honor, the *Applewood* case requires specifics in order
24 to terminate our rights to sue and to bring certain causes of
25 action, and without that kind of specificity, Your Honor, we

1 believe that that order fails to preclude, fails to have
2 preclusive effect as to these later-arising claims. And we
3 would submit not only that it was not contemplated, but that
4 it was not intended to have that effect, and that even Mr.
5 Seery's testimony suggests that that's not how he understood
6 that order to be effective.

7 Counsel argued that the Barton Doctrine does apply here
8 and rattled off the names of cases that don't -- to my
9 knowledge, no case, no case that I can find deals with this
10 type of deferential order where someone is asked -- where a
11 court is asked to defer to the business judgment of an entity
12 in approving an appointment, and nonetheless deciding that the
13 Barton Doctrine applies. That's not what *Villegas* holds.
14 That's not what *Espinosa* holds. I don't think *Barton* is
15 applicable in a situation like that. Certainly, it's outside
16 of the context of what *Barton* anticipated itself over a
17 century ago when it was decided.

18 Your Honor, if we're wrong, please know we're wrong in
19 earnest. These are not games. These are not sneakiness. No
20 such motivation is at issue here. I was hopeful that that
21 would be plain from the text of the motion for leave itself.
22 If it's not, I'd offer this in addition. The docket at the
23 District Court shows that immediately upon filing the motion
24 for leave, a proposed order was filed with it asking to have
25 the proposed complaint deemed filed, which as soon as I saw I

1 asked us to immediately retract it and to substitute a new
2 proposed order that does not ask for the amended complaint to
3 be deemed filed. That is not what we wanted.

4 And the fear was what if our motion is granted because the
5 District Court says you have the right, you don't even need
6 leave, but as to the Bankruptcy Court, you're on your own,
7 this is at your own risk, I'm not going to rule on any of the
8 jurisdictional questions that you attempt to raise? We did
9 not want our complaint deemed filed for that reason. What we
10 did want was for a court where we did not risk judicial
11 estoppel to decide whether or not our key claim under the
12 Advisers Act had been foreclosed by your July order, and that
13 was the key and motivating factor.

14 On top of that, Your Honor, instead of arguing the meaning
15 of the word pursue, let me just say this. We understood
16 pursue in that context to refer to claims or causes of action,
17 not potential, unfiled, unasserted, contemplated claims or
18 causes of action. That until a claim or cause of action is
19 actually asserted in some way, that it can't be pursued, and
20 that the reference here was to two kinds of action, those that
21 had not yet been commenced -- and your order foreclosed the
22 commencing of them without permission -- and those that had
23 been commenced. And your order couldn't foreclose the
24 commencing of them because they hadn't been commenced yet, but
25 your order did foreclose pursuing them.

1 And that was my reading of what that order said. And it
2 fits with this notion that a claim or cause of action isn't
3 something you're considering or even researching. It didn't
4 dawn on us that researching or talking to a client about a
5 potential claim could violate the order because in some
6 respect that conversation could be in pursuit of the claim.

7 By the same notion, we didn't think asking a court with
8 original jurisdiction according to Congress, asking a court to
9 decide whether or not we were foreclosed from bringing our
10 claims in a motion for leave was violating your order.

11 We don't have much else, Your Honor. In terms of the need
12 to enforce compliance with your orders, if we understand them,
13 we sure as heck are going to follow them. And if we've
14 misconstrued the term pursue, I'm certainly very sorry about
15 that.

16 I appreciate counsel saying he thinks we're probably good
17 people. I did not think what we did was any kind of gross
18 error in judgment. I thought that what we were doing was
19 preserving our clients' rights, going to a court of competent
20 jurisdiction, and asking the question, can we do what we think
21 we ought to be able to do, but is -- frankly, Your Honor,
22 we're a bit confused about because of the order that seems on
23 its face to foreclose the very lawsuit that we think we should
24 be bringing on behalf on this charitable organization that
25 foreclosed it months before the conduct at issue that gave

1 rise to the complaint. And with that conundrum, knowing what
2 to do was not obvious or easy for the lawyers or for the
3 client who was dependent on his lawyers to give him good,
4 sound advice.

5 I'm very grateful for you giving us the time and for your
6 very pointed questions. Thank you, Your Honor.

7 THE COURT: Thank you. All right. Who's next?

8 CLOSING ARGUMENT ON BEHALF OF MARK PATRICK

9 MR. ANDERSON: May it please the Court, Michael
10 Anderson on behalf of Mr. Patrick, Mark Patrick.

11 You know, this is a contempt proceeding. It's very
12 serious. And, you know, my stomach aches for the people here.

13 THE COURT: Mine does, too, by the way.

14 MR. ANDERSON: It truly aches.

15 THE COURT: Uh-huh.

16 MR. ANDERSON: And I mean what I said when I did
17 opening, when I said we don't need a hearing, an evidentiary
18 hearing. And I still don't believe we did, because it comes
19 down to what does the word pursue mean, because there's
20 already been an acknowledgement --

21 THE COURT: Do you all want to withdraw all your
22 exhibits? I've got a lot of exhibits that I now need to go
23 through. If I admit them into evidence, I'm going to read
24 them.

25 MR. ANDERSON: No, I understand.

1 THE COURT: Uh-huh.

2 MR. ANDERSON: But it does come down to the word
3 pursue. Counsel has already said commence doesn't do it, and
4 so then it's pursue.

5 And I could ask Your Honor, what did you mean when you
6 said pursue in the July order, but I'm not going to say that.
7 And I asked my client on the stand, you know, did you pursue a
8 claim or cause of action? And then it was very telling. What
9 happened with counsel? He stood up and objected to me even
10 asking if it was pursued. And it dawned on me, if he's going
11 to object, does pursue have some sort of legal -- that was his
12 objection. It was he objected on legal grounds. Does that
13 have some sort of legal meaning?

14 This is contempt. You can't be held in contempt unless it
15 is bright-line clear that you have deviated from a standard of
16 conduct and there's no ambiguity. Well, clearly, there is
17 ambiguity, because over on this side of the room we say filing
18 a motion for leave can't be pursue. We can look at the order
19 and we know it doesn't mean pursue because I just heard Your
20 Honor say you should have filed a motion for leave in this
21 Court before doing anything. All right? So if that -- if
22 that is what without the Bankruptcy Court first determining,
23 if that's what the motion for leave is, well, then if we go up
24 to the first sentence, No entity may commence or pursue a
25 claim or cause of action, then it has this, without the

1 Bankruptcy Court first determining, that means -- if pursue
2 means a motion for leave, if that's what that means, then that
3 order says you can't commence or file a motion for leave
4 before you file a motion for leave. Because that's what it
5 means. If pursue means motion for leave and you've said you
6 should have come here and filed a motion for leave because it
7 says, Debtor, without the Bankruptcy Court first determining
8 that notice that such claim or cause of action represents a
9 colorable claim, and specifically authorizing. The vehicle to
10 do that would be a motion for leave, right? And you can't
11 pursue anything until a motion for leave has been filed.

12 Now, where was the motion for leave? And I understand,
13 Your Honor, you know, no expert at reading the room,
14 obviously, you're frustrated that the motion for leave was
15 filed in the District Court and not in this Court. But it
16 doesn't change the fact, and neither did any of the evidence,
17 change anything, is what does pursue mean?

18 And if someone says, well, it's obviously clear it means
19 x, well, is it really obviously clear it means filing a motion
20 for leave? Because nobody on my side, when you read it, when
21 you say pursue, can read it that way. And if we're going to
22 have contempt sanctions being posed, and there has to be clear
23 and convincing evidence or beyond reasonable doubt, depending
24 upon, you know, I don't think you have to get to that part,
25 but clear --

1 THE COURT: This is not criminal contempt.

2 MR. ANDERSON: Clear and convincing is the civil
3 standard for contempt.

4 THE COURT: Right.

5 MR. ANDERSON: And if pursue is open to that much
6 interpretation, it's not the kind of thing that can be held in
7 contempt on. And I understand the frustration. I hear the
8 frustration. I hear counsel talk about that was not their
9 intent when they filed it. You know, I heard Mr. Patrick get
10 up there. I heard counsel say, hey, Mr. Patrick's doing his
11 job, he's a good guy, seems like a good guy. Well, Mr.
12 Patrick's up there. Look, they filed the underlying lawsuit.
13 Nobody -- there's no motion for that in this Court about the
14 underlying lawsuit. It's only about the motion for leave.
15 That's all we're here about.

16 And so you go to that, and we've heard all these arguments
17 about it, and we've been here almost as long as the motion for
18 leave was actually on file before it was sua sponte dismissed
19 without prejudice.

20 And so I go back to that and I say that, if pursue means
21 filing a motion for leave, then that order would require an
22 order for anyone to violate -- it would be violated upon the
23 filing of a motion for leave, because you can't pursue
24 something until the Bankruptcy Court has already first
25 determined, after notice, that such claim or cause of action

1 represents a colorable claim and specifically authorizing the
2 entity to bring such a claim. Because that -- we already know
3 that's a motion for leave in and of itself. Therefore,
4 pursue, just simply filing a motion for leave will put you in
5 that.

6 But that gets into all these -- we don't need to be having
7 this discussion about, you know, is a motion for leave pursue?
8 Is pursue a motion for leave? I've heard both arguments here.
9 It doesn't justify contempt. And I know -- and so certainly
10 with respect to my side, I, you know -- given that, I would
11 request that the Court deny the request for contempt.

12 And again, I want to say, too, look, we hear you.
13 Absolutely hear you. Understand the frustration. Totally
14 hear you on that.

15 I'm going to turn over the balance of my time to Mr.
16 Phillips, --

17 THE COURT: Okay.

18 MR. ANDERSON: -- unless you have any questions, Your
19 Honor. I appreciate it.

20 THE COURT: Okay. I do not.

21 CLOSING ARGUMENT ON BEHALF OF MARK PATRICK

22 MR. PHILLIPS: Your Honor, Louis M. Phillips, and
23 I'll be brief. I'm going to try to bring it down to -- I was
24 not involved. We are -- we are here because of the
25 indemnification provisions of CLO Holdco representing Mr.

1 Patrick individually. My firm was not involved in the
2 litigation. We were hired to represent CLO Holdco and some of
3 the defendants in the UCC litigation, and our role has
4 expanded to do some other stuff, particularly represent Mr.
5 Patrick because of the indemnification provisions of the
6 Holdco entity documents. He's entitled to indemnification and
7 we're providing a defense for him. That's why we're here.

8 So I come way after the order. We have not been involved
9 in anything. But I think I'm just going to try to distill
10 everything about the order and about the concern and about the
11 litigation, because the Court is asking about is this an end
12 run on the settlement? The Court is also saying, all you had
13 to do was come here first.

14 But let's look. We're here about one thing, the motion
15 for leave. And as Mr. Anderson pointed out, the commence or
16 pursue a claim, according to the order, commence or pursue can
17 only occur after the Court has authorized the litigation.
18 Okay. So that's what the order says. You can't commence or
19 pursue.

20 Counsel for the Debtors says, well, it can't be after
21 commencement because you've already commenced the action. So
22 pursue has to mean something before the commencement of the
23 action. It would mean something before the commencement of
24 the action under this order.

25 But it doesn't mean something before the Court approves

1 the commencement of the action, because commence or pursue
2 under this order does not occur before the Court has acted.
3 That's the language of the order. It only occurs after the
4 Court has authorized it. That's the context in which commence
5 or pursue exists, after this Court has authorized.

6 Okay. So it can't be pursuit before the Court has
7 authorized without commencement because it only is triggered
8 by the Court's authorization of the action, which means,
9 before you commence it, actions in time take time, before you
10 commence the action, you have to pursue the action to commence
11 it. But you can't do that until you've approved it. All
12 right?

13 That's the temporal concern and why we say the motion for
14 leave can't be pursuit of an action under this order. It
15 might be pursuit under another definition or another order.
16 In other words, maybe an order could be issued saying, you
17 can't file a motion for leave in any other court but this one.
18 I don't know whether it'd be a good order, but the order could
19 say that. But when you say all you had to do was file a
20 motion for leave in this Court and everything would be okay,
21 no. The motion for leave is not, under this order, pursuit.
22 Pursuit only occurs under this order after you've done
23 something, after Your Honor has done something.

24 So if a motion for leave is violative at the District
25 Court, the motion for leave would be violative here, because

1 it occurs before Your Honor has taken action.

2 Now, clearly, you want people to ask, but just as clearly,
3 and this was the point of my remarks earlier at the tail-end
4 of opening, just as clearly, I have a question, because
5 frankly, I understand what these guys are saying. These guys
6 haven't really said it. They're a little shame-faced at what
7 these guys are asking. Because what these guys are asking is
8 whether or not an employee Seery, as the CRO -- and we heard,
9 oh, he bargained for it, he wouldn't have done it without
10 getting the order and the protections because -- did he
11 bargain for not having to comply with the Investor Advisory
12 Act? Did he bargain for not having a fiduciary duty to third
13 parties? Because the one thing that Mr. Bridges has been
14 trying to tell you is that, under this order, if it's
15 interpreted one way, you would never authorize a violation of
16 the Investment Advisory Act because it wouldn't necessarily be
17 gross negligence or willful misconduct.

18 In other words, in employing Seery, did the Debtor go out
19 in this disclosure statement and say, we are advisor to \$1.2
20 billion of third-party money, and guess what, our CRO has no
21 fiduciary duty to you? We have forestalled any claim under
22 the Investment Advisory Act in our employment order. Did that
23 happen?

24 Because if that happened, I don't know if the Court was
25 really thinking that way, because that -- that can't happen in

1 a confirmation order before, under the Fifth Circuit
2 authority, after disclosure statement, plan, et cetera, et
3 cetera, because that's a third party release of claims that
4 may -- that haven't occurred yet. You would be releasing
5 because you would be saying you have no right. You have no
6 right. This is not temporal. This is saying you have no
7 right, if it's saying that, to bring an Investment Advisory --
8 Investment Advisory Act or a Breach of Fiduciary Duty Act
9 that's not gross negligence or willful misconduct forever upon
10 an employment order.

11 Now, if that's not what it means, then we have another
12 conundrum. The other conundrum -- and I'm new to this, maybe
13 this has been thought out by everybody, but I don't think so.
14 The other conundrum is this order doesn't apply to actions
15 that don't involve willful -- gross negligence or willful
16 misconduct. It only applies to those types of actions. So,
17 frankly, I don't know what the order does.

18 I think the problem -- I probably shouldn't be the
19 purviewer of who ought to know because my standard's probably
20 really low, given my capacity here. But I'm a guy off the
21 street. Seery gets hired to run the Debtor. Seery testifies
22 and he admits, we've got Investment Advisory Act all over the
23 place. We're making lots of fees out of administering all
24 this third-party money. Do they know? Do they know he's
25 immune? Do the third parties know?

1 Now, a standard about managing the Debtor? Absolutely.
2 That's just pure D Chapter 11, pure D corporate, pure D
3 standard liability if you're operating an entity. You're not
4 liable for gross negligence or willful misconduct. You're
5 not. And so any claim for damage to the Debtor or to the
6 estate by actions taken in the CRO capacity, absolutely.
7 Absolutely. You don't want a bunch of yoyos suing, you did
8 something against the Debtor and the Debtor is now worth \$147
9 less than it was because you did something, you were negligent
10 and you forgot to put the dog out. No. It's got to be gross
11 negligence or willful misconduct if you are talking about
12 running the Debtor and running the estate.

13 But that's not what we have here. And you can ask all the
14 questions you want about whether the lawsuit's any good, but
15 that's not what's up before the Court. What's up before the
16 Court is whether filing a motion for leave is contempt. And
17 under this order, you're saying, all you had to do is come
18 here. Well, in one reading of it, you'd have never got relief
19 because you can't bring the kind of action. I foreclosed it
20 by employing Seery. He no longer has a fiduciary duty and is
21 no longer bound by the Investment Advisory Act. Case closed.
22 Get out of here. Unless you can formulate something around so
23 that you can establish gross negligence or willful misconduct,
24 I've done away with all those causes of action.

25 I don't think that's what happened. And if that's not

1 what happened, this doesn't apply because it shouldn't apply
2 to third-party actions. It should apply to actions for damage
3 to the estate by creditors of the estate for whom Seery is
4 acting as CRO of the Debtor, who is the -- in possession of
5 the estate. That makes perfect sense. Perfect sense. And
6 nobody would say that you shouldn't have sole authority to
7 determine whether a CRO who's acting for the estate and
8 damages the estate -- because that'd be a claim against the
9 estate. That would be an administrative claim against the
10 estate. That is just hornbook law.

11 That's the way I see this order. And I admit I didn't
12 write it. I admit I didn't submit it. I admit I didn't
13 litigate it. I admit I'm coming in late. But sometimes maybe
14 a fresh pair of elderly, trifocal-assisted eyes doesn't hurt.
15 Because I will tell you, Judge, on one read this Court says
16 don't bother coming here because you don't have the kind of
17 claim that can be brought, even if you're a third party. And
18 the only way that happens is if Seery's released from any
19 obligation under the Investment Advisory Act, and I think
20 everybody would like to know that. And he can't be sued for
21 breach of fiduciary duty to third parties that he admits he
22 owes. I think people would like to know that.

23 And if it doesn't, then this is not -- this order is not
24 about that. But the fact -- I've been at this 40 years, and I
25 usually don't want to talk about myself. There's really not a

1 lot to talk about. But I hear Mr. Morris how he's never done
2 this, he's never done that. I hear this, I'm a good -- you
3 know, whatever. I'm confused. I've been doing this 41 years.
4 Bankruptcy, 39.7. I must be crazy, but that's what I've been
5 doing. And I'm confused because I don't even know if they
6 needed to come here. I don't even know if, had they come
7 here, if they could have even presented an action for gross --
8 for negligence or breach of fiduciary duty, could have --
9 gross negligence or willful misconduct? I don't know whether
10 this order just applies to Seery's duties as CRO vis-a-vis
11 creditors of the estate and property of the estate and damage
12 to the estate. Because that's not what we're dealing with
13 here.

14 The point is, Judge, this is contempt. And I understand
15 Your Honor knows all about contempt. Your Honor knows about
16 *Matter of Hipp*. Your Honor knows about civil contempt
17 authorization for bankruptcy courts. Your Honor knows that
18 you can't operate without the right to impose civil contempt
19 sanctions. And Your Honor knows, and I agree with Your Honor,
20 that civil contempt is both remedial and coercive.

21 But how do you coerce around my questions? Maybe I am all
22 wet, but if I am, I don't think I am, and I don't understand
23 that I am, and that's why I'm concerned about going off into
24 this contempt wilderness and millions in fees, when the motion
25 for leave was dismissed and when the lawsuit doesn't ask for

1 or includes most of its claims. I don't even -- I have not
2 studied the lawsuit. I wasn't involved in it. But if it's a
3 breach of fiduciary duty and Advisory Act and it says what
4 you've been told it says, that he should have pulled up
5 different stuff, that the valuation metrics were different,
6 that he shouldn't have used it, I don't know that they're
7 saying fraud. I don't know that they're saying he knew he was
8 doing -- I think they're saying he breached the Investment
9 Advisory Act. And that's not gross negligence or willful
10 misconduct. Then does this order apply or this order -- does
11 this order foreclose that?

12 The fact is, I think we could have decided this on the
13 pleadings and on the order. We didn't. The fact that Mr.
14 Dondero did A, B, C. And I will tell you this. Mr. Patrick
15 has stood up. He's going to get a harpoon, he's going to get
16 a harpoon, subject to his right to appeal. But he has told
17 this Court. We represent him. We're not trying to get him
18 out of having authorized the order. It's very important for
19 this Court to understand. Mr. Patrick is one of these
20 entities. Mr. Dondero can holler and scream all he wants to.
21 Mr. -- and look, did he terminate Grant Scott? If I'm Grant
22 Scott, and this is my best friend and I was in his wedding and
23 I was his roommate and I was his best friend and I'm doing
24 this stuff for \$5,000 and I do something and \$5,000 a month
25 and I do something and I get hollered at and I've got a full a

1 law practice, I'm an IP lawyer, why don't I just tell him to
2 go jump in a lake, which is the other way you could look at
3 Grant Scott leaving. I want you to jump in a lake. I'm out
4 of here. I don't need this.

5 Thank you.

6 THE COURT: All right. Thank you.

7 MR. DEMO: Your Honor, how much time do they have
8 left, --

9 THE COURT: Um, --

10 MR. DEMO: -- to be honest?

11 THE COURT: Nate, are you -- 26 minutes? All right.

12 MR. TAYLOR: I'll go way under, Your Honor.

13 THE COURT: Okay.

14 CLOSING ARGUMENT ON BEHALF OF JAMES DONDERO

15 MR. TAYLOR: Your Honor, Clay Taylor. I'm here on
16 behalf of Mr. Dondero. He was named as an individual alleged
17 violator within the order.

18 THE COURT: Okay. I'm getting lawyers mixed up. Mr.
19 Anderson, who did you represent?

20 MR. ANDERSON: Mr. Patrick. Mr. Phillips and I
21 represent --

22 THE COURT: You're Mr. Patrick?

23 MR. PHILLIPS: We're Mr. Patrick.

24 THE COURT: You're both --

25 MR. PHILLIPS: Mr. Patrick.

1 THE COURT: Okay. I'm sorry. I'm getting my Fort
2 Worth law firms mixed up. Okay.

3 MR. TAYLOR: That's quite all right. Clay Taylor
4 from Bonds Ellis here on behalf of Mr. Dondero. And we're
5 here because he was named in the alleged violator motion
6 within the order as an alleged violator. We don't think that
7 he is, for the reasons that we're about to explain, but we
8 were ordered to appear --

9 A VOICE: No.

10 MR. TAYLOR: -- and so therefore we are appearing and
11 telling you why we're not an alleged violator.

12 First of all, for all the reasons that Mr. Sbaiti and Mr.
13 Bridges and Mr. Phillips and Mr. Anderson said, the court
14 order was in effect. We agree with that. It required certain
15 conduct to be done. Yes, it did. It said you couldn't
16 commence something. It said you couldn't pursue it. I think
17 we have gone through what the pursuit and commence. Nobody is
18 arguing that anything was commenced. It comes down to
19 pursuit.

20 But let's talk about what the evidence shows about Mr.
21 Dondero. It shows that Mr. Dondero believes that there have
22 been breaches of fiduciary duty. He thinks that there has
23 been negligence committed. He believes that actions should be
24 taken. We don't run away from that. He, frankly, told you
25 that.

1 But here, he didn't take any action to pursue it. The DAF
2 did. CLO Holdco did. It's undisputed that he's not an
3 officer, director, or control person for either of those
4 entities. The act we're here on is a motion for leave to file
5 an amended complaint to include Mr. Seery. That's -- Mr.
6 Dondero didn't take any of those acts. He believes it should
7 have been done, but he's not the authorizing person.

8 He might have -- let's just pretend that he thought he was
9 authorizing something. It doesn't matter that he thought he
10 could authorize something or that he was trying to push for
11 it. The fact remains he can't authorize it. You know, he can
12 say, I declare war on Afghanistan. Well, he can't. Congress
13 can't. He can write a letter to his Congressman. He already
14 wrote a letter to his Congressman. He talked. He talked with
15 the head of the acting CLO -- CLO Holdco and he said, I think
16 there's something wrong here. I think you should be looking
17 into it. You know what, he goes, you might be right. Go talk
18 with Mazin about it. Give him some data. Conduct an
19 investigation. They did. And then they went to the
20 authorizing person and they filed a motion for leave to
21 include Mr. Seery. Mr. Dondero did nothing wrong in that.

22 Now, there is some personal animosity. I think that Your
23 Honor has probably seen there seems to be some personal
24 animosity between Mr. Seery and Mr. Dondero, and that's
25 unfortunate. But just because there's some personal animosity

1 doesn't mean that maybe something wasn't done wrong. Maybe
2 that Mr. Dondero -- he's certainly allowed to at least tell
3 people, well, I think there was something done wrong. And if
4 there is an action to be had, then those appropriate entities
5 can take it. But he didn't do those things.

6 And so even if he says, just like Michael Scott, "I
7 declare bankruptcy," it doesn't matter. You have to take the
8 certain actions.

9 THE COURT: I got it. I don't know if everyone did.

10 MR. TAYLOR: Yes, well, yeah, you have to be a *The*
11 *Office* fan.

12 But so that's where we stand. And for all the reasons the
13 prior people have discussed, I don't think that there was any
14 violation of this Court's order. But even if there was, Mr.
15 Dondero in this situation was not the one. We're going to
16 have to deal with the other order that came out yesterday in
17 due course, but for this discrete issue that is before this
18 Court today, Mr. Dondero didn't violate anything.

19 Thank you.

20 THE COURT: All right. Mr. Morris, you get the last
21 word.

22 REBUTTAL CLOSING ARGUMENT ON BEHALF OF THE DEBTOR

23 MR. MORRIS: Thank you, Your Honor. These are going
24 to be discrete points because it's truly rebuttal. I'm going
25 to try to respond to certain points.

1 Mr. Bridges and Mr. Phillips made extensive arguments
2 about why they believe the order is wrong, why it's
3 overreaching. They tried to get into your head to think about
4 what you intended or what you thought. The fact of the matter
5 is, the answer to all of those questions -- first of all, none
6 of it's relevant to this motion because we've got the order --
7 but the answer is very simple. Forget about coming here to
8 seek leave to amend to add Mr. Seery. We can avoid Mr.
9 Sbaiti's concerns about judicial estoppel or something. Why
10 didn't they just file the motion for reconsideration? They
11 filed that after they filed the motion for leave to amend,
12 after we filed the motion for contempt. Only then did they
13 file the motion for reconsideration.

14 Now, we think it's ill-thought-out. We think it's
15 problematic. Probably not today, is my guess, we'll argue to
16 you as to why we think that motion ought to be denied. But if
17 they truly believed that the order was infirm in any way,
18 wouldn't the proper thing to have been to come here and tell
19 you that? Wouldn't the proper thing to be to come to the
20 court that issued the order that you have a problem with and
21 ask the court to review it again? And if Your Honor overruled
22 the motion, to appeal it.

23 Why are we even doing this? Why did they do it? It's not
24 we. Why did they do it? Right? And that solves almost
25 everything they've said. That's point one.

1 Point two, the January order. The January order is very
2 important. It's important not just because it applies to
3 directors, but it's important because Mr. Dondero agreed to
4 it, and it also applies -- I want to get it -- Paragraph 10.
5 It's Exhibit 15. It applies to the independent directors and
6 the independents directors' agents. If a CEO is not an agent
7 of an independent director, I'm not sure what is. The
8 independent directors are the body that appointed the CEO.
9 The CEO, Mr. Seery, is acting on behalf of the board. This is
10 the order that Mr. Dondero agreed to. It's the order -- take
11 out the word independent director; put in Mr. Seery -- it's
12 the order everybody's complaining about. But even the January
13 order certainly applied to Mr. Seery. That's point two.

14 Point three. I've heard a lot of concerns about the
15 slippery slope and what does pursuit mean and does talking to
16 a lawyer mean pursuit and doing an investigation being
17 pursuit. I don't know, Your Honor, and I don't care, because
18 that's not what we're here to talk about. We're here to talk
19 about a specific act -- not a hypothetical, not a slippery
20 slope. We're talking about the filing of a motion for leave
21 to amend a complaint to add Mr. Seery as a defendant. That's
22 all we're talking about. So, you know, the rest of it, it's
23 just noise. And the only question is whether, and I think
24 it's pretty clear, that means pursuit.

25 Another version on the theme of was there any alternative

1 to filing the motion in the District Court, I think there was.
2 The Sbaiti firm did file that suit against Acis in New York.
3 And if Your Honor checks the docket in the Acis bankruptcy, I
4 think you'll find that there's a motion from Mr. Rukavina, for
5 a comfort order, basically, saying that -- asking the court to
6 declare that the filing of the complaint in New York against
7 Acis didn't violate the plan injunction. I think I have that
8 right.

9 But I point that out, Your Honor -- it's not evidence in
10 the record, but the Court can certainly take judicial notice
11 of what's on its docket -- I point that out because there's
12 another example of a lawyer who is very active in this case
13 who actually -- now, he already commenced the suit, so he did
14 -- they did both simultaneously, so I don't want to suggest
15 that that's the perfect thing to have done, but at least he's
16 here asking for -- he's bringing it to your attention, he's
17 telling you it's happened, he's asking for a comfort order,
18 and someday Your Honor may rule on it. I don't know.

19 Number six, what's with the pursuit of Mr. Seery? What is
20 with the pursuit of Mr. Seery? Is there any doubt in
21 anybody's mind that the Debtor is going to have to indemnify
22 Mr. Seery and will bring in another law firm? And while I
23 don't think it will ever happen in a hundred billion years, if
24 there is a judgment against Mr. Seery, isn't that going to be
25 the Debtor's responsibility? Why are they even bothering to

1 do this? I think it's a fair question for the Court to ask.

2 I think Mr. Taylor came up and talked about animosity.

3 How do you explain going after Jim Seery? How do you do it?

4 He's going to be indemnified. It's in -- it's in like three

5 different orders. It's in the confirmation order. It's in

6 the CEO order. It's -- it's probably as a matter of law.

7 It's in the Strand partnership agreement. It's -- he's been

8 indemnified like 12 different times. What is the purpose,

9 other than to make Mr. Seery's life miserable? There is none.

10 You'll never hear a rational explanation for why they're doing

11 this.

12 THE COURT: Just so you know, I've not looked at any
13 of the pleadings in the District Court --

14 MR. MORRIS: And I'm not asking you to.

15 THE COURT: -- other than what has been presented to
16 me today.

17 MR. MORRIS: Yeah. That's fine, Your Honor.

18 THE COURT: But I'm very flipped out about the causes
19 of action against the Debtor, --

20 MR. MORRIS: Yeah.

21 THE COURT: -- who hasn't reached an effective date.

22 MR. MORRIS: Well, --

23 THE COURT: And I'm most interested to know what the
24 defenses, motions --

25 MR. MORRIS: We'll get to that.

1 THE COURT: -- are going to be raised in that regard.

2 MR. MORRIS: We will get to that in due course.

3 I do want to point out, just to be clear, because we keep
4 hearing that they learned about, you know, all of these
5 horrible things after the fact. In the complaint, which I
6 think is Exhibit 12, --

7 THE COURT: I'm there.

8 MR. MORRIS: -- at Paragraph 127, the Plaintiffs
9 allege, "Mr. Seery was informed in late December 2020 at an
10 in-person meeting in Dallas, to which Mr. Seery had to fly,
11 that HCO" -- excuse me "HCLF and HCM had to suspend trading in
12 MGM Studios' securities because Seery had learned from James
13 Dondero, who was on the board, of a potential purchase of the
14 company. The news of the MGM purchase should have caused
15 Seery to revalue."

16 I cannot begin to tell you the problems with that
17 paragraph. We're not going to discuss them today. I made a
18 promise to these folks that we wouldn't get into the merits of
19 the complaint. But Your Honor was onto something before, and
20 those issues, you know, may see the light of day one day. And
21 if they do, folks are going to have to deal with it. But I
22 will point out that at the time the communication was made,
23 the other TRO was in effect. We didn't bring that one to the
24 Court's attention. But the important point there, Your Honor,
25 is December 2020. It is December 2020. That is the

1 allegation that's being made against Mr. Seery. And the fact
2 of the matter is, because I've done the research myself, the
3 Court will find that on December 23rd, the day the HarbourVest
4 settlement motion was filed, it was fully public knowledge
5 that Amazon and Apple, I think, had shut down negotiations
6 with MGM at that time. Right? So the big secret information,
7 it was in the public domain on December 23rd.

8 There will also never be any evidence ever that Mr. Seery
9 got on a plane and flew to Dallas in December 2020, but that's
10 a minor point.

11 I'd like to just conclude, Your Honor, by saying I've
12 heard pleas that they understand. They understand, Your
13 Honor, now they understand. It would be good if they promised
14 the Court that they won't seek to assert claims against Mr.
15 Seery anywhere but in this Court and comply with the order as
16 it's written. That, that, that would be taking a little bit
17 of responsibility.

18 I have nothing further, Your Honor.

19 THE COURT: Okay. Thank you.

20 All right. Let me give you some clue of when I'm going to
21 be able to rule. I've been glancing at my email in hopes that
22 something set tomorrow would go away, but that's not
23 happening. I've got a hearing that I've been told will take
24 all day tomorrow on a case involving a half-built hotel,
25 luxury hotel in Palm Springs, California. So I have to spend

1 the next I don't know how long getting ready for that hearing
2 tomorrow, and then I have what looks like a full day of
3 hearings Thursday, including you people coming back on
4 something.

5 MR. POMERANTZ: Your Honor, I was going to address
6 that. We have Dugaboy's motion to enforce compliance on the
7 2015(3) reports.

8 THE COURT: That's what it was.

9 MR. POMERANTZ: Since we haven't gotten to the motion
10 to modify the Seery order, my suggestion would be we use that
11 time -- of course, Dugaboy, I'm not sure if they're on the
12 phone. They're not here. I'm not sure that's time sensitive.
13 But if Your Honor wanted to have a hearing on that motion,
14 which was contemplated to take place today, the Debtor would
15 be okay having that motion heard on Thursday, perhaps by
16 WebEx, unless Your Honor wants us to stay here, which we would
17 if you do, and then reschedule the 2015(3) motion.

18 But again, that wasn't my motion. It's Dugaboy's. I'm
19 not sure Mr. Draper is on. But we obviously have some
20 calendar issues.

21 MR. MORRIS: And Your Honor, just to complete it, I
22 think also on Thursday the Court is supposed to hear HCRE and
23 Highland Capital Management Services motions for leave to
24 amend their complaint in the promissory note litigation
25 against each of them. I think that's also on the calendar for

1 Thursday. I don't expect that -- I hope that doesn't take
2 very long, but that's also, I believe, on the calendar.

3 THE COURT: Okay. Mr. Draper, are you out there?

4 MR. PHILLIPS: I didn't see him on the list, Your
5 Honor. I was just looking. But --

6 THE COURT: Okay. All right. Well, --

7 MR. PHILLIPS: What is the question? I can send him
8 a text real quick.

9 THE COURT: Well, just have -- if you all could
10 follow up with Traci Ellison, my courtroom deputy, tomorrow, I
11 am perfectly happy to continue the motion to modify the Seery
12 order to Thursday morning at 9:30 if Draper is willing to
13 continue the 2015 motion.

14 MR. POMERANTZ: I know, if I was him, my first
15 question would be is what times does the Court have available?
16 We could work that through Ms. Ellison.

17 THE COURT: Yes. And I'm just letting you know --
18 talk to her. Okay. Number one, I'll do these by video, okay?
19 WebEx. But I know I don't have any time Wednesday, and
20 Thursday's a busy day.

21 We have court Friday morning at 9:30 in--?

22 THE CLERK: Cici's Pizza.

23 THE COURT: Cici's Pizza? That's not going to take
24 very long, right?

25 THE CLERK: I don't think so.

1 THE COURT: I can potentially do something, you know,
2 10:00 o'clock Friday morning. Other than that, then you've
3 got to wait a while, because I have a seven-day trial, live
4 human beings in the courtroom starting next Monday. And so my
5 point is mainly to tell you, as much as I would like to rule
6 very, very fast, it's going to be, it looks like, a couple of
7 weeks or so before I can give you a ruling on this.

8 MR. BRIDGES: Your Honor?

9 THE COURT: Yes?

10 MR. BRIDGES: May I? It's our motion. I would
11 propose, if counsel would agree, that we just submit it on the
12 papers.

13 THE COURT: Everybody good with that? I'm certainly
14 good with that.

15 MR. POMERANTZ: Your Honor, I'd like there to be
16 argument. I have a lengthy argument. I think I'd like to
17 address a number of the things that -- Mr. Bridges made his
18 argument today. Okay?

19 THE COURT: Okay.

20 MR. POMERANTZ: His deck, it was entitled, Motion to
21 Modify.

22 THE COURT: Okay.

23 MR. POMERANTZ: So that's very nice of him, but I
24 would like to make my argument.

25 THE COURT: Okay. Let's try to nail this down right

1 now. Friday at 10:00 o'clock, can we do the oral argument
2 WebEx?

3 MR. POMERANTZ: On that one, yes, Your Honor.

4 THE COURT: On that one? Everybody good? Okay. So
5 we'll come back Friday, 10:00 o'clock, WebEx, for that motion.

6 You know, I'm going to say a couple of things where --
7 I've leaned toward thinking this is a pretty simple motion
8 before me, the motion for contempt, but when people offer into
9 evidence documents, I read your documents. Okay? That's my
10 duty. And so I have however many exhibits I admitted today
11 that I am going to look at and see how they sway me one way or
12 another on this issue. But I will tell you that my gut is
13 there has been contempt of court. Okay? I don't see anything
14 ambiguous at all about Paragraph 5 of my July 16th, 2020
15 order. Somebody may think I overreached, but if that was the
16 case, someone should have argued at the time I was
17 overreaching. Someone should have appealed the order. And I
18 think it's a *Shoaf/Espinosa* problem at this point for anyone
19 to argue about the enforceability of that order.

20 I think there's nothing ambiguous in the wording. Pursue
21 is not ambiguous. There's nothing confusing about the
22 requirement that any entity who wanted to sue or pursue a
23 claim, you know, commence claim, pursue a claim against Mr.
24 Seery, had to come to the Bankruptcy Court. Standard-fare
25 gatekeeping order.

1 So what I'm going to be looking at is, do these documents
2 I admitted into evidence change my view on that, and then the
3 harder question is who of the alleged contemnors am I going to
4 think it's clear and convincing committed contempt and -- who
5 are the contemnors, and then, of course, what are the damages?
6 Coercive or compensatory damages?

7 So, again, you know how I feel, to the extent that's
8 helpful in your planning purposes. I'm pretty convinced
9 contempt of court has occurred. It's just a matter of who's a
10 contemnor and what are the damages.

11 I'll say a couple of remaining things. I continue to be
12 frustrated, I think was the word people used, about
13 unproductive ways we all spend our time. I am going to spend
14 I don't know how many more hours drafting another ruling on a
15 contempt motion, and attorneys' fees are through the roof.
16 And, you know, I dangled out there a question I couldn't
17 resist about MGM.

18 And I will tell you, I mean, someone mentioned about their
19 stomach aching. Personal story, I could hardly sleep the
20 night it became public about the Amazon purchase, because,
21 silly me, maybe, I'm thinking game-changer. This is such
22 potentially a windfall, an economic windfall. Maybe this
23 could be the impetus to make everyone get in a room and say
24 look, we've got this wonderful windfall of money. I don't
25 know how much is owned directly or indirectly by the Debtor of

1 MGM stock. I don't know how much the Debtor manages. I
2 don't know how much, you know, some other entity. I know it's
3 probably spread out in many different entities. But I know, I
4 know because I listen, that one or more of the Highland-
5 managed CLOs has some of this, and I think I read -- remember
6 that HCLOF, which now Highland owns more than 50 percent of,
7 has some of this stock. Right?

8 MR. DONDERO: Do you want to know what happened?

9 THE COURT: Oh.

10 A VOICE: No.

11 THE COURT: Well, okay. So, you know, I can
12 understand I'm getting into maybe uncomfortable territory in a
13 public proceeding, so I'll stop.

14 But, you know, do we need to set up a status conference?
15 Do you all need to like talk about this? Am I just being
16 naïve? Couldn't this be a game-changer, where maybe it would
17 give new incentive to --

18 MR. POMERANTZ: Your Honor, I would -- he's been
19 pretty quiet through the whole hearing, Mr. Clemente. He has
20 the Committee, that a couple of people you've heard have sold
21 claims. They're now held by other parties.

22 You know, the door is always open. I don't think this is
23 going to be game-changer, unfortunately. We would like
24 nothing more, as Debtor's counsel. We don't enjoy coming to
25 Your Honor for contempt hearings.

1 Mr. Clemente said that it was productive. We would sure
2 participate. But right now, we have creditors who are very
3 angry that millions and millions of dollars have been spent on
4 really a waste of time and a waste of the Court's time and a
5 waste of everyone's time and eating into the creditors' money.
6 So I would ask Mr. Clemente to address that.

7 MR. CLEMENTE: I'm here.

8 THE COURT: Yes, he's way in the back, hoping to be
9 ignored.

10 MR. CLEMENTE: It's too cold, Your Honor, where I was
11 sitting. For the record, Your Honor, --

12 THE COURT: I noticed some entity called Muck
13 Holdings bought HarbourVest, according to the docket.

14 MR. CLEMENTE: That's correct. Muck Holdings bought
15 HarbourVest, and I believe also the Acis claim, and then
16 there's a different entity that bought the Redeemer claim.

17 THE COURT: Uh-huh.

18 MR. CLEMENTE: So, as we mentioned in our -- one of
19 our pleadings, I think it was the retention pleading for
20 Teneo, the Committee consists of two members currently, Meta-e
21 and UBS.

22 THE COURT: Uh-huh.

23 MR. CLEMENTE: Obviously, Your Honor just approved
24 the UBS settlement recently. The U.S. Trustee is aware of the
25 make-up of the Committee, and is currently comfortable with

1 the Committee maintaining a two-person membership at this
2 point.

3 In terms of whether the MGM transaction is a game-changer,
4 we've not yet seen, to Your Honor's point, how all of that
5 rolls up through the various interests that the Debtor may or
6 -- you know, may have --

7 THE COURT: Okay.

8 MR. CLEMENTE: -- that would be implicated by the MGM
9 transaction. If ultimately the MGM transaction has to
10 actually occur, right? I mean, so, you know, just based on
11 what I read in the public documents, we're not sure when that
12 transaction may actually happen. But obviously it's a good
13 thing for the Debtor's estate because it's going to recognize
14 value for the estate.

15 In terms of whether it ultimately changes how Mr. Dondero,
16 you know, wishes to proceed, that's entirely up to him, Your
17 Honor. But we don't see it as something at this point that
18 would suggest that there's an overall back to let's talk about
19 a pot plan because of where the MGM transaction might
20 ultimately come out.

21 So I don't know if that's helpful to Your Honor, but those
22 are -- that's my perspective.

23 THE COURT: Well, and I'm not trying to, you know,
24 push a pot plan on anyone.

25 MR. CLEMENTE: No, I understand.

1 THE COURT: I'm just saying it looked like an
2 economic windfall. I just -- I don't know how much is
3 Highland versus other entities in the so-called byzantine
4 complex, but, gosh, I just hoped that there might be something
5 there to change the dynamic of, you know, lawsuit, lawsuit,
6 lawsuit, lawsuit, motion for contempt, motion for contempt.

7 MR. CLEMENTE: Agreed, Your Honor.

8 THE COURT: Uh-huh.

9 MR. CLEMENTE: And like I said, it was a very
10 positive development obviously for the creditors for the
11 Debtor. But whether it's the game-changer that Your Honor
12 would envision, I'm not sure that I can suggest at this point
13 that it is.

14 I think that, you know, obviously, we don't like to see
15 these lawsuits continue to be filed. That's the whole point
16 of the gatekeeper order, Your Honor.

17 THE COURT: Uh-huh.

18 MR. CLEMENTE: I didn't say anything during the
19 hearing, but obviously the January 9th order, as Your Honor
20 has said many times, was in the context of a trustee being
21 appointed.

22 THE COURT: Right. Right.

23 MR. CLEMENTE: Right? So, and the July 16th order,
24 very similar vein, it's an outshoot of that. In fact, it was
25 contemplated in the January 9th settlement that a CEO could be

1 appointed.

2 So I think, again, it's just -- it's important, the
3 context in which that January 9th order came into play, for
4 this very reason, so we could avoid this type of litigation,
5 Your Honor.

6 THE COURT: Uh-huh.

7 MR. CLEMENTE: And so again, I didn't -- I obviously
8 didn't rise to mention that during the hearing, but Your Honor
9 is already aware of that. I didn't need to remind Your Honor
10 of that.

11 THE COURT: Uh-huh. Okay.

12 MR. CLEMENTE: Anything else for me, Your Honor?

13 THE COURT: No. Thank you.

14 MR. CLEMENTE: Okay, then, Your Honor.

15 THE COURT: Sorry I picked on you. But, all right.
16 Well, again, I hope the message has landed in the way I hope
17 will matter, and that is I'm going to look at your documents
18 but I feel very strongly that, unless there's something in
19 there that, whoa, is somehow eye-opening, I'm going to find
20 contempt of court. It's just a matter of who and what the
21 damages are. There's just not a thing in the world ambiguous
22 about Paragraph 5 of the July 9th, 2020 order. So I'll get to
23 it as soon as we humanly can get to it.

24 Mr. Morris, anything else?

25 MR. MORRIS: Nothing. No, thank you.

1 THE COURT: I guess I'll see you Thursday on the
2 WebEx. Thank you.

3 THE CLERK: All rise.

4 (Proceedings concluded at 6:00 p.m.)

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CERTIFICATE

21

22

I certify that the foregoing is a correct transcript from
the electronic sound recording of the proceedings in the
above-entitled matter.

23

/s/ Kathy Rehling

06/09/2021

24

25

Kathy Rehling, CETD-444
Certified Electronic Court Transcriber

Date

002236

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EXHIBIT 3

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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.,¹

Debtor.

)
) Chapter 11
)
) Case No. 19-34054-sgj1
)
)
)

**DEBTOR'S WITNESS AND EXHIBIT LIST WITH RESPECT
TO EVIDENTIARY HEARING TO BE HELD ON JUNE 8, 2021**

Highland Capital Management, L.P. (the "Debtor") submits the following witness and exhibit list with respect to the *Motion for Modification of Order Authorizing Retention of James P. Seery, Jr. Due to Lack of Subject Matter Jurisdiction* [Docket No. 2248], which the Court has

¹ The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.



set for hearing at 9:30 a.m. (Central Time) on June 8, 2021 (the “Hearing”) in the above-styled bankruptcy case (the “Bankruptcy Case”).

A. Witnesses:

1. James P. Seery, Jr.;
2. Grant Scott (by deposition designation);
3. Any witness identified by or called by any other party; and
4. Any witness necessary for rebuttal.

B. Exhibits:

Letter	Exhibit	Offered	Admitted
1.	Transcript of January 9, 2020 Hearing		
2.	Transcript of July 14, 2020 Hearing		
3.	Transcript of February 2, 2021 Hearing		
4.	Transcript of February 14, 2021 Hearing		
5.	Debtor’s Motion for an Order to Enforce the Order of Reference [Docket 2351-4]		
6.	DAF/CLO Holdco Structure Chart (GScott000007) [Dondero June 1, 2021 Deposition Exhibit 1]		
7.	CLO Holdco, Ltd.’s Notice of Appearance and Request for Copies [Docket No. 152]		
8.	Certificate of Service [Docket No. 296]		
9.	Order Approving Settlement With Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures For Operations in the Ordinary Course [Docket No. 339]		
10.	Certificate of Service [Docket No. 345]		

Letter	Exhibit	Offered	Admitted
11.	Debtor's Motion Under Bankruptcy Code Sections 105(a) and 363(b) for Authorization to Retain James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer and Foreign Representative <i>Nunc Pro Tunc</i> to March 15, 2020 [Docket No. 774]		
12.	Certificate of Service [Docket No. 779]		
13.	Order Approving Debtor's Motion Under Bankruptcy Code Sections 105(a) and 363(b) for Authorization to Retain James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer and Foreign Representative <i>Nunc Pro Tunc</i> to March 15, 2020 [Docket No. 854]		
14.	Redline of Fifth Amended Plan of Highland Capital Management, L.P. (AS MODIFIED) [Docket No. 1809]		
15.	Order (I) Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and (II) Granting Related Relief [Docket No. 1943]		
16.	Transcript Designations from the January 21, 2021 Deposition of Grant Scott		
17.	Transcript Designations from the June 1, 2021 Deposition of Grant Scott		
18.	Amended and Restated Investment Advisory Agreement by and between Charitable DAF Fund, L.P., Charitable DAF GP, LLC, and HCMLP, effective July 1, 2014 (PATRICK_000923)		
19.	Amended and Restated Service Agreement by and among HCMLP, Charitable DAF Fund, L.P., and Charitable DAF GP, LLC, effective July 1, 2014 (PATRICK_000938)		
20.	Any document entered or filed in the Bankruptcy Case, including any exhibits thereto		
21.	All exhibits necessary for impeachment and/or rebuttal purposes		
22.	All exhibits identified by or offered by any other party at the Hearing		

Dated: June 5, 2021.

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EXHIBIT 16

GRANT SCOTT - 1/21/2021

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:)	
)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT,)	
L.P.)	Case No.
)	19-34054-sgj11
Debtor.)	
-----)	
HIGHLAND CAPITAL MANAGEMENT,)	
L.P.,)	
Plaintiff,)	
)	Adversary
vs.)	Proceeding No.
)	21-03000-sgj
HIGHLAND CAPITAL MANAGEMENT)	
FUND ADVISORS, L.P.; NEXPOINT)	
ADVISORS, L.P.; HIGHLAND)	
INCOME FUND; NEXPOINT)	
STRATEGIC OPPORTUNITIES FUND;)	
NEXPOINT CAPITAL, INC.; and)	
CLO HoldCo, LTD.,)	
)	
Defendants.)	
-----)	

VIDEOCONFERENCE DEPOSITION OF Grant SCOTT

Thursday, 21st of January, 2021

Reported by: Lisa A. Wheeler, RPR, CRR

Job No: 188910

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2 choice.

3 Q. Okay. And do you recall who served

4 the subpoena on you? Actually, let me ask a

5 different question because I'm really not

6 interested in the -- in the details.

7 Did Mr. Dondero serve that subpoena

8 on you or did somebody else?

9 A. His counsel for his ex-wife.

10 Q. Mr. -- so -- so the lawyer acting on

11 behalf of Mr. Dondero's ex-wife served you with

12 the subpoena?

13 A. Correct.

14 Q. Okay. You're familiar with an

15 entity called CLO HoldCo Limited; is that

16 right?

17 A. Yes.

18 Q. Do you know what that entity is?

19 A. Yes.

20 Q. What -- what -- can you describe for

21 me what CLO HoldCo Limited is.

22 A. It's a holding company of assets

23 including collateralized loan obligation-type

24 assets. That's a portion of the overall

25 portfolio. It's an organization that is

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1 GRANT SCOTT - 1/21/2021

2 role of director of CLO HoldCo Limited, was

3 that entity already in existence?

4 A. I believe so. I'm not certain. I'm

5 not certain.

6 Q. What are your duties and

7 responsibilities as a director of CLO HoldCo

8 Limited?

9 A. Well, my day-to-day responsibilities

10 are to interface with -- with the manager of

11 the -- of the assets of CLO. I do have some

12 role in -- with respect to some of the entities

13 that are -- I -- I have a limited role with

14 respect to a subset of the charitable

15 foundations that receive money from the CLO

16 HoldCo structure, which is commonly referred to

17 as the DAF. There's -- sometimes those are

18 used interchangeably.

19 Q. What terms are used interchangeably?

20 A. Well, the DAF and CLO HoldCo are

21 frequently -- by -- by other people they're --

22 it's the short -- it's the -- I guess it's

23 easier to use the acronym DAF than CLO HoldCo

24 Limited, so I'm frequently having to -- there

25 is a DAF entity so -- that's above -- above CLO

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1 GRANT SCOTT - 1/21/2021

2 integrated with other entities as part of a

3 charitable -- loosely what we -- what we refer

4 to as a charitable foundation equivalent.

5 Yeah.

6 Q. All right. We'll -- we'll get into

7 some detail about the corporate structure in a

8 moment. Do you personally play any role at CLO

9 HoldCo Limited?

10 A. Yes. My technical title is

11 director, but I -- I don't necessarily know

12 specifically what that title means other than I

13 act, as I understand it, as -- as a trustee for

14 those -- for those assets.

15 Q. And where did you get that

16 understanding?

17 A. Approximately ten years ago from the

18 group that -- that set up the hierarchy.

19 Q. And which group set up the

20 hierarchy?

21 A. Employees at Jim Don- -- as I

22 understand it, employees of Highland along with

23 outside counsel, as I understand it, and also,

24 I guess, input from -- from Jim Dondero.

25 Q. At the time that you assumed the

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1 GRANT SCOTT - 1/21/2021

2 in terms of the management, and so it's

3 frequently confusing and I'm having to clarify

4 at times which entity we're talking about,

5 but -- but other parties frequently use those

6 terms interchangeably.

7 Q. Okay.

8 MR. MORRIS: Lisa, when we use the

9 phrase DAF, because you'll hear that a lot,

10 it's all caps, D-A-F.

11 BY MR. MORRIS:

12 Q. You mentioned that you interface

13 with the manager of assets of CLOs. Do I have

14 that right?

15 A. Well, of all the assets.

16 Q. Okay. Who is the manager of the

17 assets that you're referring to?

18 A. Highland Capital Management.

19 Q. Highland Capital Management manages

20 all of the assets -- withdrawn.

21 Is it your understanding that

22 Highland Capital Management manages all the

23 assets that are owned by CLO HoldCo Limited?

24 A. Yes.

25 Q. Who makes the investment decisions

Page 14

1 GRANT SCOTT - 1/21/2021

2 on behalf of CLO HoldCo Limited?

3 A. Highland -- those managers that you

4 mentioned.

5 Q. Okay. I didn't mention anybody in

6 particular.

7 A. Oh, I'm sorry. The -- the -- the

8 money manager -- could you repeat that

9 question? I'm sorry. I'm so sorry.

10 Q. Can you just -- can you just

11 identify for me the person who makes investment

12 decisions on behalf of CLO HoldCo Limited.

13 A. It's -- well, it's -- it's persons

14 as I understand it. I inter- -- interface with

15 a -- with a group, but it's -- it's Highland

16 Capital employee -- Highland Capital Management

17 employees.

18 Q. Okay. Can you just name any of

19 them, please.

20 A. Hunter Covitz, Jim Dondero. Mark

21 Okada's no longer there, but I believe he was

22 involved, and there are others that I interface

23 with.

24 Q. Can you -- can you recall the name

25 of anybody other than Mr. Okada and Mr. Dondero

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2 Q. Is it fair to say that you do not

3 make decisions, investment decisions, on behalf

4 of CLO HoldCo Limited?

5 A. Yes.

6 Q. Does CLO HoldCo Limited have any

7 employees that you know of?

8 A. No.

9 Q. Does CLO HoldCo have any --

10 withdrawn.

11 Does CLO HoldCo Limited have any

12 officers that you know of?

13 A. No.

14 Q. So am I correct that you're the only

15 representative in the world of CLO HoldCo in

16 terms of being a director, officer, or

17 employee?

18 A. Yes.

19 Q. Do you receive any compensation from

20 CLO HoldCo for your services as the director?

21 A. I do now.

22 Q. When did that begin?

23 A. I believe in the middle of 2012.

24 Q. Okay. And had you served as a

25 director prior to that time without

Page 15

1 GRANT SCOTT - 1/21/2021

2 and Mr. Covitz?

3 A. Yeah. Over the years I've worked

4 with Tim Cournoyer, Thomas Surgent, but I

5 think -- I think that's the core -- the core

6 group.

7 Q. All right. And is there anybody

8 within that core group who has the final

9 decision-making authority concerning the

10 investments in CLO HoldCo Limited?

11 A. I don't -- I don't know. I'm sorry.

12 Say that again. I just want to -- I'm sorry.

13 I'm trying to be -- I'm not trying to -- I'm

14 trying to be --

15 Q. I understand. And --

16 A. Sorry. If you could just repeat it.

17 Q. Sure. Is there any particular

18 person who has the final decision-making

19 authority for investments that are being made

20 on behalf of CLO HoldCo Limited?

21 A. Amongst that group I am -- I am not

22 sure.

23 Q. Okay. So are there any other

24 directors of CLO HoldCo besides yourself?

25 A. No.

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1 GRANT SCOTT - 1/21/2021

2 compensation?

3 A. Yes.

4 Q. And have you been the sole director

5 of CLO HoldCo Limited since the time of your

6 appointment approximately ten years ago?

7 A. Yes.

8 Q. Nobody else has served in that

9 capacity; is that right?

10 A. That is correct.

11 Q. There have been no employees or

12 officers of that entity during the time that

13 you've served as director, correct?

14 A. Yes.

15 Q. Do you know who formed CLO HoldCo

16 Limited?

17 A. I do not.

18 Q. Do you know why CLO HoldCo Limited

19 was formed?

20 A. I believe so.

21 Q. Can you explain to me why -- your

22 understanding as to why CLO HoldCo was formed.

23 A. So as I understand things, Jim

24 Dondero wanted to create a charitable

25 foundation-like entity or entities, and tax

Page 22

Page 23

1 GRANT SCOTT - 1/21/2021
2 going well.
3 Q. And -- and I think you -- you
4 testified just now that there was kind of a
5 difference between prebankruptcy and
6 postbankruptcy. Do I have that right?
7 A. Yes.
8 Q. And can you tell me -- is it fair to
9 say that before the bankruptcy, you didn't
10 devote much time to CLO HoldCo, or do I have
11 that wrong?
12 A. Well, I -- just the time that --
13 that I mentioned just -- I'm sorry. The -- the
14 time I just mentioned now when you asked me,
15 that was the pre period. Excuse me. I haven't
16 talked about the postbankruptcy period.
17 Q. So are you -- are you -- are you
18 devoting more time or less time since the
19 bankruptcy?
20 A. Much more.
21 Q. Much more since the bankruptcy
22 filing?
23 A. Yes.
24 Q. And so why did the bankruptcy filing
25 cause you to spend more time as a director of

Page 24

Page 25

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1 A. It was various obligations that were
2 owed to -- to CLO, things that had been
3 previously donated or -- or agreements that had
4 been set up that transferred certain assets,
5 and it was basically the -- the -- the amounts
6 were derived from those sorts of transactions.

7 Q. Okay. You're a patent lawyer; is
8 that right?

9 A. I -- I'm exclusively a patent
10 attorney, yes.

11 Q. Have you been a patent lawyer on an
12 exclusive basis since the time you graduated
13 from law school?

14 A. From law school, yes.

15 Q. Can you just describe for me
16 generally your educational background.

17 A. So I'm an electrical engineer by
18 training. I graduated from the University of
19 Virginia in 1984. I then went to graduate
20 school at the University of Illinois. I
21 received my master's degree in 1986, and then I
22 immediately joined IBM Research at the Thomas
23 Watson Institute in New York where I was a --
24 my title was research scientist, but I was -- I

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2 CLO HoldCo Limited?
3 A. Well, initially, and this would
4 be -- this would be late 2019, it was --
5 aft- -- after the bankruptcy was -- was filed
6 and I obtained counsel, who are on the phone
7 now -- or in this deposition now, excuse me,
8 that was -- that transition occurred because
9 CLO was a debtor -- excuse me, a creditor to --
10 to the debtor and had to take steps to
11 establish its -- its claim. So if I understand
12 the -- things correctly, the -- the debtor
13 identified as part of the filing -- I don't
14 know how bankruptcy works, but if I under- --
15 if my recollection is correct, there's a
16 hierarchy from biggest to smallest, and we were
17 relatively high up. And when I say we or I,
18 I -- I just mean CLO was relatively high up.
19 And so initially, for the first period of so
20 many months, the -- the exclusive focus was on
21 our position as a creditor -- a creditor having
22 a certain claim against a debtor.
23 Q. Can you describe for me your
24 understanding of the nature of the claim
25 against the debtor.

Page 24

Page 25

1 GRANT SCOTT - 1/21/2021

2 guess I was more of a research engineer, if

3 that matters. And I did that until I

4 transitioned -- or I began law school in the

5 fall of 1988, and then I graduated law school

6 in May of 1991.

7 Q. And where did you go to law school?

8 A. University of North Carolina.

9 Q. Do you have any formal training in

10 investing or finance?

11 A. I do not.

12 Q. Do you hold yourself out as an

13 expert in any field of investment?

14 A. None -- none at all.

15 Q. Have you had any formal training

16 with respect to compliance issues? You

17 mentioned compliance issues earlier.

18 A. No.

19 Q. Now, do you have any knowledge about

20 compliance rules or regulations?

21 A. Minimal that I've -- that have

22 occurred organically but -- but generally, no.

23 Q. You don't hold yourself out as an

24 expert in com- -- in the area of compliance,

25 correct?

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2 A. No. No. I'm -- no.

3 Q. Do you have any particular

4 investment philosophy or strategy?

5 MR. CLARK: I'm going to object to

6 the form of the question. And, John,

7 can -- can we get an agreement that -- I

8 know you were objecting just simply on the

9 form basis yesterday -- that objection to

10 form is sufficient today?

11 MR. MORRIS: Sure.

12 MR. CLARK: Okay. And I object to

13 form. Grant, you can answer to the extent

14 you can.

15 THE WITNESS: I forget the question

16 now that you interrupted. I'm sorry.

17 BY MR. MORRIS:

18 Q. So -- so -- and I'm going to ask a

19 different question because in hindsight, that's

20 a good objection.

21 In your capacity as the director

22 of -- withdrawn.

23 Do the employees of Highland that

24 you identified earlier, do they make investment

25 decisions on behalf of CLO HoldCo Limited

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2 don't recall.

3 Q. Okay. So -- withdrawn. I'll --

4 I'll go on.

5 How did you come to be the director

6 of CLO HoldCo?

7 A. I was asked either by Jim Dondero

8 or -- directly or indirectly by -- by Jim

9 Dondero.

10 Q. And who is Jim Dondero?

11 A. Well, at the time, he was the head

12 or one of the heads of Highland Capital

13 Management, a friend of mine.

14 Q. How long have you known Mr. Dondero?

15 A. Since high school so that -- 1976.

16 Q. Where did you and Mr. Dondero grow

17 up?

18 A. In northern New Jersey.

19 Q. Do you consider him among the

20 closest friends you have?

21 A. I think he is my closest friend.

22 Q. Did you two go to college together?

23 A. We actually -- for the last -- last

24 two years I was at UVA, University of Virginia,

25 excuse me, he and I were -- were at UVA. So we

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2 without your prior knowledge on occasion?

3 A. On occasion, they do.

4 Q. So there's no rule that your prior

5 approval is needed before investments are made,

6 right?

7 A. I don't know whether they have an

8 internal guideline as to the amount that

9 triggers when they get in touch with me or

10 whether it's a new -- a change, something new,

11 or -- versus recurring. So I don't -- I don't

12 know what they use internally for that metric.

13 Q. Okay. Are you aware of any

14 guideline that was ever used by the Highland

15 employees whereby they were required to obtain

16 your consent prior to effectuating transactions

17 on behalf of CLO HoldCo Limited?

18 A. I understand there was one or more,

19 but I do not know that.

20 Q. Okay. Did you ever see such a

21 policy or list of rules that would require your

22 prior consent before the Highland employees

23 effectuated transactions on behalf of CLO

24 HoldCo Limited?

25 A. Possibly some time ago, but I -- I

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2 did not start out at UVA initially, but -- but

3 we both transferred -- I transferred my

4 sophomore year. I was actually a chemical

5 engineer at the University of Delaware when I

6 transferred in, and then he transferred in his

7 junior year. So we were there at college for

8 two years.

9 Q. And -- and based on your

10 relationship with him, is it your understanding

11 that one of the reasons he chose to transfer to

12 UVA is -- is to -- because you were there?

13 A. Oh, no. He transferred -- he --

14 he -- he transferred there because of the -- so

15 he went to the University of -- he -- he went

16 to Virginia Tech University, which is more

17 known as being an engineering school, which I

18 might have wanted to go to, and less a finance

19 business school. And if I understand things

20 correctly, and I believe I do, he transferred

21 to UVA because of the well-known

22 business/finance program, accounting program.

23 Q. And did you -- did you and

24 Mr. Dondero become roommates at UVA?

25 A. We weren't roommates, but we lived

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1 GRANT SCOTT - 1/21/2021

2 in the -- we were housemates. I'm sorry. We

3 were housemates.

4 Q. So you shared a house together. How

5 would you describe your relationship with

6 Mr. Dondero today?

7 A. It's -- it's been strained a while,

8 for some time, but -- but generally, very good.

9 Good to very good.

10 Q. Without -- without getting personal

11 here, can you just generally identify the

12 source of the strain that you described.

13 A. This -- I think it would be fair to

14 say that this bankruptcy, particularly events

15 in 2020 so some months after the bankruptcy was

16 declared, things have become -- we -- we still

17 have a close friendship, but -- but things

18 are -- are a bit -- are a bit more difficult.

19 Q. Were you ever married?

20 A. I've never been married.

21 Q. Did you serve as Mr. Dondero's best

22 man at his wedding?

23 A. I did.

24 Q. Is it fair to say that -- that

25 Mr. Dondero trusts you?

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2 course of those 45 years, Mr. Dondero has

3 shared confidential information with you that

4 he didn't want you to reveal publicly to other

5 people?

6 A. Yes.

7 Q. And is it your understanding that

8 because of the nature of your relationship with

9 him, he asked you to serve as the director of

10 CLO HoldCo Limited?

11 A. Yes. I believe it's because he --

12 he trusted -- trusted me with -- with assets

13 relating to his charitable vision. I -- I --

14 yeah. Yes.

15 Q. And is it your understanding that he

16 thought you would help him execute his

17 charitable vision?

18 A. That was the point of attraction

19 initially. It wasn't for money. I wasn't

20 being paid. That was -- the charitable mission

21 was the attraction.

22 Q. Does Mr. Dondero play any role in

23 the management of the CLO HoldCo Limited asset

24 pool?

25 MR. CLARK: Objection, form.

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2 MR. CLARK: Objection, form.

3 BY MR. MORRIS:

4 Q. Withdrawn.

5 Do you believe that Mr. Dondero

6 trusts you?

7 A. I do.

8 Q. Over the years, is it fair to say

9 that Mr. Dondero has confided in you?

10 MR. CLARK: Objection, form.

11 BY MR. MORRIS:

12 Q. You can answer if you understand it.

13 A. I think so.

14 Q. I -- I -- what's your answer? You

15 think so?

16 A. Maybe you can de- -- I think of

17 confide as -- could you define confide, please.

18 Q. Sure. Is it -- is it fair to say

19 that over the -- let me -- you've known

20 Mr. Dondero for almost 45 years, right?

21 A. Yes.

22 Q. And you consider him to be your

23 closest friend in the world, right?

24 A. Yes.

25 Q. And is it fair to say over the

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2 A. I'm sorry. Could you repeat that?

3 My -- my screen went small and then big again.

4 I was distracted.

5 Q. What role does Mr. Dondero play with

6 respect to the management of the CLO HoldCo

7 Limited asset pool?

8 MR. CLARK: Objection, form.

9 A. He is with the company that manages

10 that asset pool. He's one of the people I

11 named previously as managing those assets.

12 Q. He is -- he -- he is the -- do you

13 understand that he has the final

14 decision-making power with respect to the

15 management of the assets that are held by CLO

16 HoldCo Limited?

17 MR. CLARK: Objection, form.

18 A. I believe I ansel -- answered that

19 previously. I -- I don't know who has -- for

20 certainty I do not know who has that within

21 that company. I don't. If -- if -- I -- I

22 don't know, consistent with my prior answer.

23 Q. Did you ever ask anybody who had the

24 final decision-making authority for investments

25 on behalf of CLO HoldCo Limited?

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2 A. I -- I did not.

3 Q. Did you ever make a decision on

4 behalf of -- withdrawn.

5 In your capacity as a director --

6 withdrawn.

7 In your capacity as the sole

8 director of CLO HoldCo Limited, can you think

9 of any decision that you've ever made that

10 Mr. Dondero disagreed with?

11 A. Since -- prior to the bankruptcy,

12 no, not that I'm aware of.

13 Q. And since the bankruptcy?

14 A. There are decisions that I've made

15 that he's disagreed with.

16 Q. Can you identify them?

17 A. Yes.

18 Q. Please do so.

19 A. Okay. So the reason I'm pausing is

20 I'm trying to put these in chronological order

21 and, at the same time, identify maybe some of

22 the more important ones versus the lesser

23 important ones. One of the decisions I made

24 related to a request that I received from the

25 independent board of Highland. I don't know

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2 A. I don't know when he became aware of

3 that decision. I'm not sure I ever volunteered

4 that the decision was even made, but at some

5 point, it became an issue because he found out

6 through -- if I understand the sequence of

7 events correctly, he found out possibly through

8 his counsel because there was ultimately

9 litigation about that issue. It became known

10 to everyone at some point what I had done, I --

11 I think. And subsequent to that, it became an

12 issue because of CLO HoldCo having fairly

13 significant cash flow issues with respect to

14 its expenses and obligations, including payment

15 of management fees as well as some of the

16 scheduled charitable giving that was -- that

17 was by contract already predefined. My

18 decision to tuck that money -- or to agree

19 to -- my agreement to let that money be tucked

20 away created some -- created some -- created

21 some problems --

22 Q. And -- and --

23 A. -- for CLO HoldCo.

24 Q. Okay. And I just want you to focus

25 specifically on my question, and that is, what

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2 how the request was transmitted to me, but I

3 believe the way it played out is as follows: I

4 believe I was asked to call Jim Seery, and the

5 other -- and Russell Nelms, and the third

6 independent director, I believe his name is

7 John. I -- I forget right now what his last

8 name is. They were in New York, said they were

9 in a conference room. I called in. They were

10 very pleasant. They identified who they were,

11 and they had a request, and the request was

12 that I agree to a transfer -- or that I -- that

13 I agree to allow certain assets that were not

14 Highland's assets but they were CLO's as- --

15 assets -- apparently, there was no dispute

16 about that at any point in time, but that I

17 agree to allow certain assets that were due CLO

18 to be transferred to the registry of the

19 bankruptcy court. And either on that call I

20 immediately agreed or ended the call, called my

21 attorney, and then immediately agreed. It was

22 a very -- I accommodated the request quickly.

23 Q. Okay. And can you just tell me at

24 what point in time you spoke with Mr. Dondero,

25 and what did he say that you recall?

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2 did Mr. Dondero say to you that -- that causes

3 you to testify as you did, that this is one

4 issue that he didn't agree with?

5 A. I believe his concern was that

6 because it was money that was undisputably to

7 flow to CLO HoldCo that -- which had many, many

8 other nonliquid assets -- this was a form of a

9 liquid asset. It was cash in effect, proceeds.

10 -- that the money should have been allowed to

11 flow to be available for obligations. He

12 didn't under- -- I -- I -- I don't know what he

13 was thinking, but the -- the issue was that the

14 decision to put it into escrow was -- was --

15 was in- -- incorrect, that there was no basis

16 for it.

17 Q. That -- that's an issue where after

18 learning of your decision, he didn't agree with

19 it; is that fair?

20 A. That's right.

21 Q. Okay. Can you think of any decision

22 that you've ever made on behalf of CLO HoldCo

23 Limited where Mr. Dondero had advance knowledge

24 of what you were going to do and he objected to

25 it, but you nevertheless overruled his

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2 objection and went ahead and did what -- did

3 what you thought was right?

4 A. Okay. Let me -- let me -- I have --

5 I'm sorry.

6 Q. We're here.

7 A. Oh, I'm sorry. I'm having some

8 issues with my screen. So that may have

9 occurred with respect to the original proof of

10 claim. Then there was a subsequent amendment

11 to the proof of claim, and I -- I believe it --

12 I believe that he might have been aware of both

13 of those and was in disagreement with -- with

14 those. But after working with my attorney, we

15 just -- you know, we did what we thought was

16 right, and I still think what we did was right.

17 There was an issue with respect to Har- --

18 HarbourVest that occurred relatively recently

19 where he objected to a decision that I had

20 made. As I understand it, I could have

21 contacted my attorney and changed the decision,

22 but I didn't, and I still think that was the

23 right decision.

24 We have filed plan objections. I

25 can't say if he has any -- in that regard, I --

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2 A. So we had to interface with Highland

3 employees at some point to get information to

4 support our proof of claim, and my guess, and

5 it's just a guess, is that he was aware of

6 those inquiries. I -- I'm sorry. I shouldn't

7 speculate. I don't know. But he -- with

8 respect to the original proof of claim, I'm --

9 I'm not aware of what specifically he was

10 objecting to or was -- thought should have been

11 different, but the -- with respect to the

12 amended proof of claim, which reduced the

13 original proof of claim to zero, I think that's

14 where he had a -- an issue.

15 Q. And did you speak with him about

16 that topic prior to the time the amended claim

17 was filed, or did you only speak with him after

18 it was filed?

19 A. I'm not sure the timing of that.

20 Q. And with respect to HarbourVest, did

21 he ask you to object to the settlement on

22 behalf of CLO HoldCo Limited, and is that

23 something that you declined to do?

24 MR. CLARK: Objection, form.

25 A. I'm -- I'm sorry. I was confused

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2 I -- I don't know what his thoughts are on

3 objections. They would not have been

4 communicated with -- by me to him, but my

5 attorney might have consulted with his

6 attorney, and there -- they may know what that

7 difference is, but I -- that was just another

8 big decision. I -- I -- maybe that --

9 Q. All right. Let me see if I can --

10 let me see if I can summarize this. So two

11 proofs of claim. Is it fair to say that

12 Mr. Dondero saw those proofs of claim before

13 they were filed?

14 MR. CLARK: Objection, form.

15 BY MR. MORRIS:

16 Q. Withdrawn.

17 A. It --

18 Q. Do -- do you know whether

19 Mr. Dondero saw the proofs of claim before they

20 were filed?

21 A. I don't believe he did.

22 Q. What -- what steps in filing the

23 proofs of claim did he object to that you

24 overruled? Did he think there was -- something

25 should be different about them?

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2 with the word. Could you please repeat that?

3 Q. Yes. You mentioned HarbourVest

4 before, right?

5 A. Yes.

6 Q. And you mentioned that there was an

7 issue with Mr. Dondero and you concerning

8 HarbourVest; is that right?

9 A. Yes.

10 Q. And did that have to do with whether

11 or not CLO HoldCo Limited would -- would object

12 to the debtor's motion to get the HarbourVest

13 settlement approved?

14 A. Would -- would get the

15 HarbourVest --

16 Q. Settlement approved by the court.

17 A. I'm not trying to be difficult.

18 I'm -- I'm -- could you just repeat that one

19 more time? I'm --

20 Q. What was -- what was --

21 A. There was --

22 Q. Let me try again.

23 A. Okay.

24 Q. What was the issue with respect to

25 HarbourVest that he objected to and -- and you

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2 A. With CLO HoldCo or the entities
3 associated with CLO HoldCo?
4 Q. The latter.
5 A. Yes, I believe so.
6 Q. All right. I've prepared what's
7 called a demonstrative exhibit. It's just --
8 A. Yes.
9 Q. -- just -- it's a document that, I
10 think, reflects facts, but I want to ask you
11 about it.
12 MR. MORRIS: La Asia, can we please
13 put up Exhibit 1.
14 (SCOTT EXHIBIT 1, Organizational
15 Structure: CLO HoldCo, Ltd., was marked
16 for identification.)
17 BY MR. MORRIS:
18 Q. Okay. Can you see that, Mr. Scott?
19 A. Yes, I can.
20 Q. Okay. So I think I took the
21 information from resolutions that were attached
22 to the CLO HoldCo proof of claim, and that's
23 why you got that little footnote there at the
24 bottom of the page. But let's start in the
25 lower right-hand corner and see if this chart

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2 particular structure, to the best of your
3 knowledge?
4 A. I -- I didn't -- I'm sorry. I
5 didn't hear you very well.
6 Q. To the best of your knowledge, did
7 Mr. Dondero make the decisions to establish the
8 structure that's reflected on this page?
9 A. Oh, I don't know if he made the
10 decision to establish this structure, although
11 it's -- it's -- I'm sorry. Strike that. I --
12 if -- if what you're saying is did he approve
13 of this structure, to my knowledge, yes.
14 Q. Okay. Do you hold any position with
15 respect to Charitable DAF Fund, L.P.?
16 A. I -- I -- your chart says no. I --
17 I -- I thought I had a role there, too.
18 Q. I don't know. I don't have
19 information on that. That's why I'm asking the
20 question.
21 A. I -- I -- I believe -- yes, I
22 believe I have the same role as I do in -- in
23 CLO HoldCo.
24 Q. And that would be director?
25 A. Yes.

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comports with your understanding of the facts.

Do you know that CLO HoldCo Limited was formed in the Cayman Islands?

A. Yes.

Q. And to the best of your knowledge, is CLO HoldCo Limited 100 percent owned by the Charitable DAF Fund, L.P.? If you're not sure, just say you're not sure if you don't know. It's not a test.

A. So the -- the -- the familiarity I -- I'm -- I'm familiar with the different -- I'm confused with the arrangement of the boxes and the ownership interest versus managerial interest. I believe that's -- that's right.

Q. Okay. And -- and you're the sole director of CLO HoldCo Limited, right?

A. Yes.

Q. And this whole structure was -- the idea for this structure, to the best of your knowledge, was to implement Mr. Dondero's plan for charitable giving; is that fair?

A. Yes. Ultimately, yes.

Q. And is it fair to say then that he -- he made the decision to establish this

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Q. And to the best of your knowledge, is the Charitable DAF GP, LLC, the general partner of Charitable DAF Fund, L.P.?

A. Yes.

Q. And is it your understanding that you are the managing member of Charitable DAF GP, LLC?

A. Yes.

Q. Does Charitable DAF GP, LLC, have any employees?

A. No.

Q. Does Charitable DAF GP, LLC, have any officers or directors?

A. No.

Q. Are you the only person affiliated with Charitable DAF GP, LLC, to the best of your --

A. I believe so.

Q. Do you receive any compensation for serving as the managing member of Charitable DAF GP, LLC?

A. No. The -- I don't interact with it very often. It's -- no, I don't receive any compensation.

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Charitable DAF Fund, L.P., Grant Scott, director, and we put under CLO HoldCo Limited Grant Scott, director, would everything on the right side of that page be accurate, to the best of your --

A. I believe so.

Q. Well, let's move to the left side of the page. Have you heard of the entity Charitable DAF HoldCo Limited?

A. Yes.

Q. Are you the sole director of Charitable DAF HoldCo Limited?

A. Yes.

Q. How did you become -- how did you come to be the char- -- the sole director of Charitable DAF HoldCo Limited?

A. That was when it was established.

Q. And did Mr. Dondero ask you to serve in that capacity?

A. Yes.

Q. And did Mr. Dondero ask you to serve as the managing member of Charitable DA- -- DAF GP, LLC?

A. Yes.

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1 resolutions, and there's one that I have in
2 mind that shows Charitable DAF HoldCo Limited
3 holding 99 percent of the limited partnership
4 interests of Charitable DAF Fund, L.P., and
5 there's another that shows it being a hundred
6 percent. Do you -- do you know which is
7 accurate at least at this time?

8
9 A. There's a 1 percent/99 percent
10 division, and I am -- I believe it's the 99
11 percent, but I'm -- I'm getting confused by
12 the -- by the arrangement. I'm so used to
13 another arrangement. I -- I believe the 99
14 percent is correct.

15 Q. Okay. Do you have any understanding
16 as to who owns the other 1 percent of the
17 limited partnership interests of Charitable DAF
18 Fund, L.P.?

19 A. No. This -- this is confusing to
20 me. No.

21 Q. Okay. There are, at least on this
22 page, three foundations that I think you've
23 identified. Are those three foundations
24 together with the fourth that you mentioned the
25 owners of the Charitable DAF HoldCo Limited?

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2 A. Owners?

3 Q. Yes.

4 MR. CLARK: Objection, form.

5 A. They -- they only participate in the

6 money that flows up to them.

7 Q. And what does that mean exactly?

8 A. What's that?

9 Q. What does that -- what do you mean

10 by that? Do the foundations fund Charitable

11 DAF Fund HoldCo Limited?

12 A. Initially. Initially, as I

13 understand it, the money flows downward into

14 the Charitable DAF HoldCo Limited before it

15 ultimately makes its way to CLO HoldCo, and

16 then each of those three entities, the various

17 foundations, obtain participation interest in

18 the money that flows back to them.

19 Q. And -- and is that par- -- are those

20 participation interests in Charitable -- you

21 know what, let -- let me just pull up one

22 document and see if that helps.

23 MR. MORRIS: Can we put up -- I

24 think it's Exhibit Number 5.

25 (SCOTT EXHIBIT 2, Unanimous Written

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2 Dallas Foundation?

3 A. Yes, selected by them.

4 Q. Selected by whom?

5 A. By that foundation.

6 Q. Are you -- are you a director of all

7 of the four foundations that feed into the

8 Charitable DAF HoldCo Limited entities that --

9 A. No.

10 Q. Which of the four foundations are

11 you a director of?

12 A. This and the Santa Barbara -- I'm

13 sorry, Santa Barbara and Kansas City.

14 Q. So is -- there's one that you're not

15 a director of; is that right?

16 A. Yes.

17 Q. And which one is that?

18 A. The -- could you go back to the --

19 Q. Yeah.

20 MR. MORRIS: Go back to the

21 demonstrative.

22 A. It's the Highland Dallas Foundation

23 and Santa Barbara Foundation.

24 Q. Those are the two that you're a

25 director of?

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2 Consent of Directors In Lieu of Meeting,

3 was marked for identification.)

4 MR. MORRIS: I apologize. Let's go

5 to --

6 MS. CANTY: I'm sorry, John. I

7 can't hear you. Was that not the exhibit?

8 MR. MORRIS: 4.

9 MS. CANTY: Okay.

10 THE REPORTER: And Mr. Morris, you

11 are -- Mr. Morris, you are breaking up just

12 a little bit at the end of your questions.

13 BY MR. MORRIS:

14 Q. Okay. Do you see the document on

15 the screen, sir?

16 A. Yes, I do.

17 Q. Okay. And so this is a unanimous

18 written consent of the directors of the

19 Highland Dallas Foundation. That's one of the

20 entities that was on the chart.

21 MR. MORRIS: Can we scroll down to

22 the -- the bottom of the document where the

23 signature lines are. Right there.

24 BY MR. MORRIS:

25 Q. Are you a director of the Highland

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2 A. Yes.

3 Q. To the best of your knowledge, does

4 Mr. Dondero serve as the president for each of

5 the foundations that we're talking about?

6 A. Yes.

7 Q. To the best of your knowledge, is

8 Mr. Dondero a director of each of the

9 foundations that we're talking about?

10 A. Say that again. I'm sorry.

11 Q. Is he also a director of each of the

12 foundations?

13 A. Yes.

14 Q. Do you know whether any of the

15 foundations has any employees?

16 A. I believe they do, but I -- I -- I

17 can't say for certain.

18 Q. Does -- withdrawn.

19 Do you know if there are any

20 officers of any of the four foundations other

21 than Mr. Dondero's service as president?

22 A. I'm sorry. Say that one more time,

23 please.

24 Q. Yes. Do you know whether any of the

25 four foundations has any officers other than

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2 Mr. Dondero's service as president?

3 A. No.

4 Q. You don't know, or they do not?

5 A. I -- I don't believe anyone else

6 has. I -- actually, I should say I don't -- I

7 don't recall. I -- I don't know. I don't -- I

8 don't know.

9 Q. As a director of the Dallas and

10 Santa Barbara foundations, are you aware of any

11 officers serving for either of those

12 foundations other than Mr. Dondero?

13 A. No.

14 Q. Do you know who the beneficial owner

15 of the Charitable DAF HoldCo Limited entity is?

16 A. The beneficial owner?

17 Q. Correct.

18 A. The various -- various trusts that

19 were used to -- that were the vehicles by which

20 the money originally was established within --

21 within -- within CLO HoldCo.

22 Q. Would that be -- would one of them

23 be the Get Good Nonexempt Trust?

24 A. Yes.

25 Q. And you're a trustee of the Get Good

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2 one of the trusts that has an interest in

3 Charitable DAF HoldCo Limited?

4 A. Yes.

5 Q. Are you a trustee of the Dugaboy

6 Investment Trust?

7 A. I am not.

8 Q. Do you know who is?

9 A. I believe it's his sister.

10 Q. And is that -- you're referring to

11 Mr. Dondero's sister?

12 A. I'm sorry. Yes.

13 Q. And what's the basis for your

14 understanding that Mr. Dondero's sive -- sister

15 serves as the trustee of the Dugaboy Investment

16 Trust?

17 A. Many years ago there was a -- there

18 was a clerical error that identified me as the

19 trustee of the Dugaboy. That error was present

20 for approximately two weeks or a week and a

21 half before it was detected and corrected, and

22 so I know from that correction that it's Nancy

23 Dondero.

24 Q. Are there any other trusts that have

25 an interest in Charitable DAF HoldCo Limited

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2 Nonexempt Trust, right?

3 A. Yes.

4 Q. When did you become a trustee of the

5 Get Good Nonexempt Trust?

6 A. Many years ago. I -- I don't

7 remember.

8 Q. Are there any other trustees of the

9 Get Good Nonexempt Trust?

10 A. No.

11 Q. Does the Get Good Nonexempt Trust

12 have any officers, directors, or employees?

13 A. No.

14 MR. CLARK: Objection, form. Sorry.

15 BY MR. MORRIS:

16 Q. Withdrawn.

17 Do you know whether the Get Good

18 Nonexempt Trust has any officers, directors, or

19 employees?

20 A. It does not.

21 Q. And I apologize if I asked this, but

22 are you the only trustee of the Get Good

23 Nonexempt Trust?

24 A. Yes.

25 Q. Is the Dugaboy Investment Trust also

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2 besides those trusts, to the best of your

3 knowledge?

4 A. No.

5 Q. Is it your understanding based on

6 what we've just talked about that the Get Good

7 Nonexempt Trust and the Dugaboy Investment

8 Trust are the indirect beneficiaries of CLO

9 HoldCo Limited?

10 A. Yes.

11 Q. Can you tell me who the

12 beneficiaries are of the Get Good trust?

13 A. I mean, Jim Dondero.

14 Q. And -- and what is that -- is that

15 based on the trust agreement -- your knowledge

16 of the trust agreement?

17 A. Yes.

18 Q. Do you have an understanding of who

19 the beneficiary is of the Dugaboy Investment

20 Trust?

21 A. I don't know anything about that

22 trust.

23 MR. MORRIS: Okay. All right.

24 Let's take a short break and reconvene at

25 3:30 Eastern Time. We've been going for a

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2 while.

3 MR. CLARK: Thank you.

4 MR. MORRIS: Okay. Thank you.

5 (Whereupon, there was a recess in

6 the proceedings from 3:20 p.m. to

7 3:31 p.m.)

8 BY MR. MORRIS:

9 Q. Mr. Scott, earlier I think you

10 testified that you interfaced with the folks at

11 Highland in connection with your duties as the

12 director of CLO HoldCo Limited, right?

13 A. Yes.

14 Q. Are you aware of any written

15 agreement between Highland Capital Management

16 and CLO HoldCo Limited?

17 A. Yes, the various servicer

18 agreements.

19 Q. Okay. Are you aware that

20 Mr. Dondero resigned from his position at

21 Highland Capital Management sometime in

22 October?

23 A. No.

24 Q. Have you communicated with anybody

25 at Highland Capital Management about the

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2 Do you recall the subject matter of

3 your discussions with Mr. Throckmorton?

4 MR. CLARK: Objection, form.

5 BY MR. MORRIS:

6 Q. Withdrawn.

7 Do you recall your -- the subject

8 matter of your communications with

9 Mr. Throckmorton?

10 MR. CLARK: Objection, form.

11 BY MR. MORRIS:

12 Q. You can answer.

13 A. I -- I regularly interface with

14 Mr. Throckmorton regarding approvals of

15 expenses, and he's my sort of -- he's my point

16 person for approving wire transfers and things

17 of that nature.

18 Q. How about Mr. Patrick, what -- what

19 area of responsibility does he have with

20 respect to CLO HoldCo Limited?

21 A. He -- he doesn't, to my knowledge.

22 Q. Do you recall the nature of the

23 substance of any communications that you've had

24 with Mr. Patrick since -- you know, the last

25 two or three months?

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2 affairs of CLO HoldCo Limited at any time since

3 October?

4 A. Yes.

5 Q. Anybody other than Jim Seery?

6 A. Yes.

7 Q. Okay. Let's start with Mr. Seery.

8 You've spoken with him before, right?

9 A. Yes.

10 Q. Do you have his phone number?

11 A. Yes.

12 Q. How many times have you spoken with

13 Mr. Seery, to the best of your recollection,

14 just generally? It's not a test.

15 A. Three, maybe four times.

16 Q. Okay. Can you identify by name

17 anybody else at Highland that you've spoken

18 with since -- in the last two or three months?

19 A. I spoke to Jim Dondero. I've spoken

20 with Mike Throckmorton. The usual suspects, so

21 to speak. Mark Patrick, Mel -- Melissa

22 Schroth.

23 Q. Can you recall anybody else?

24 A. No. No. Sorry.

25 Q. Did you -- did you -- withdrawn.

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2 A. Yes. Or -- yes.

3 Q. And what -- what are the nature of

4 those conversations or the substance?

5 A. He was -- he was one of the

6 individuals that helped to establish the

7 hierarchy for the -- what I keep referring to

8 as the charitable foundation.

9 Q. And -- and do you recall why you

10 spoke to him in the last -- or -- withdrawn.

11 Do you recall the nature of your

12 communications in the last two or three months

13 with Mr. Patrick?

14 A. I --

15 MR. CLARK: And hold on, Grant. I'm

16 going to caution -- my understanding -- I

17 believe Mr. Patrick's an attorney, and so

18 I'm going to caution you that you shouldn't

19 disclose the substance of -- of those

20 communications based on the attorney-client

21 privilege.

22 MR. MORRIS: Well, I'm -- I -- I am

23 the lawyer for the company so -- I guess

24 there are other people on the phone and I

25 appreciate that, but let's see if we can --

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2 I don't mean to be contentious here, so it

3 wouldn't -- I -- I'd be part of the

4 privilege anyway.

5 BY MR. MORRIS:

6 Q. But in any event, can you tell me

7 generally -- I'm just looking for general

8 subject matter of your conversations with

9 Mr. Patrick.

10 A. I asked him how I would go about

11 re- -- resigning my position.

12 Q. And when did that conversation take

13 place?

14 A. Within the last two weeks.

15 Q. Have you made a decision to resign?

16 A. No.

17 Q. I think you mentioned Melissa

18 Schroth. Do I have that right?

19 A. Yes.

20 Q. Can you describe generally the

21 communications you had with Ms. Schroth in the

22 last few months.

23 A. They -- she has e-mailed me certain

24 documents that I needed to sign. I had a

25 conversation with her about -- about some

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2 A. No.

3 Q. In your discussions with Mr. Seery,

4 did you ever tell him that you thought Highland

5 Capital Management was in default under any

6 agreement in relation to the CLOs?

7 A. No.

8 Q. I want to focus in particular on the

9 shared services agreement. In -- in your

10 discussions with Mr. Seery, did you ever tell

11 him that you believed that Highland Capital

12 Management was in default or in breach of its

13 shared services agreement with CLO HoldCo

14 Limited?

15 A. No.

16 Q. In your communications with

17 Mr. Seery, did you ever indicate any concern on

18 the part of CLO HoldCo Limited with respect to

19 Highland Capital's Man- -- Highland Capital

20 Management's performance under the shared

21 services agreement?

22 A. No.

23 Q. As you sit here today, do you have

24 any reason to believe that Highland Capital

25 Management has done anything wrong in

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2 home -- home improvements, home construction

3 with respect to Jim Dondero's home in Colorado,

4 and that's -- I -- I think that's -- that's it.

5 Q. Okay. Do you recall communicating

6 with anybody at Highland in the last three

7 months other than Mr. Dondero,

8 Mr. Throckmorton, Mr. Patrick, and Ms. Schroth?

9 A. I -- I spoke with Jim Seery this

10 week.

11 Q. Anybody else?

12 A. I don't -- I don't know.

13 Q. Okay.

14 A. I don't think so.

15 Q. In your communications with

16 Mr. Seery, did you two ever discuss his reasons

17 for making any trade on behalf of any CLO?

18 A. No.

19 Q. In your discussions with Mr. Seery,

20 did you ever tell him that you believed that

21 Highland Capital Management had breached any

22 agreement in relation to any CLO?

23 A. Have I had that discussion with Jim

24 Seery?

25 Q. Yes.

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2 connection with its performance as the

3 portfolio manager of the CLOs in which CLO

4 HoldCo Limited has invested?

5 MR. CLARK: Object to form.

6 A. In terms of the -- are you saying --

7 please say that again. I'm sorry.

8 Q. That's okay. I ask long questions

9 sometimes so forgive me, but I'm trying to

10 get -- I'm trying to be precise so that's why

11 it's difficult sometimes. But let me try

12 again.

13 Does CLO HoldCo Limited contend that

14 Highland Capital Management has done anything

15 wrong in the performance of its duties as

16 portfolio manager of the CLOs in which CLO

17 HoldCo has invested?

18 MR. CLARK: Objection, form.

19 A

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1 GRANT SCOTT - 1/21/2021

2 to your quest -- request, but two -- two

3 issues, I believe, also pose an in- -- a

4 problem for CLO HoldCo. One is we are paying

5 for services. I think I referred to the

6 services as being soup to nuts, but we are not

7 getting the full services. We haven't been for

8 some time. So we're likely overpaying. There

9 was a Highland Select Equity issue, 11-month

10 payment that was delayed which I was unaware of

11 was due. Normally, I would have interfaced

12 with someone at Highland about that, but my

13 attorney -- but my -- my attorney had to make a

14 request for payment, and that payment was

15 ultimately made. I -- other than that, I -- I

16 don't -- I don't know. I don't believe so.

17 Q. I want to distinguish between the

18 shared services agreement between Highland

19 Capital Management and CLO HoldCo Limited on

20 the one hand and on the other hand the

21 management agreements pursuant to which

22 Highland Capital Management manages certain

23 CLOs that CLO HoldCo invests in.

24 You understand the distinction that

25 I'm making?

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1 GRANT SCOTT - 1/21/2021

2 Q. I'll try again.

3 A. I'm just -- I'm sorry. I was

4 distracted and -- and I -- I'm sorry for asking

5 you to repeat it again. Please --

6 Q. Okay.

7 A. Please re- --

8 Q. Are you aware that CLO HoldCo

9 Limited has made investments in certain CLOs?

10 A. Oh, yes, certainly.

11 Q. And are you aware that those CLOs

12 are managed by Highland Capital Management?

13 A. Yes. As the -- as the servicer,

14 yes.

15 Q. Okay. Have you ever seen any of the

16 agreements pursuant to which Highland Capital

17 Management acts as a servicer?

18 A. I've seen a few, yes.

19 Q. Does CLO HoldCo Limited contend that

20 it is a party to any agreement between Highland

21 Capital Management and the CLOs?

22 MR. CLARK: Object to form. And I

23 just want to note for the record that

24 Mr. Scott is here testifying in his

25 individual capacity, I believe, not as a

Page 71

1 GRANT SCOTT - 1/21/2021

2 A. Now I do. I'm sorry. I didn't

3 appreciate that.

4 Q. Okay. So let's just take each of

5 those pieces one at a time. You mentioned your

6 concern about services. That's a concern that

7 arises under the shared services agreement,

8 right?

9 A. Yes.

10 Q. And you mentioned something about a

11 delayed payment having to do with Highland

12 Select. Do I have that generally right?

13 A. Correct.

14 Q. And is that a concern that you have

15 that arises under the shared services

16 agreement?

17 A. It's not the agreement with respect

18 to the CLOs as I understand it.

19 Q. Okay. So then let's turn to that

20 second bucket. You were aware -- you are

21 aware, are you not, that Highland Capital

22 Management has certain agreements with CLOs

23 pursuant to which it manages the assets that

24 are owned by the CLOs?

25 A. I'm so sorry. Could you please --

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1 GRANT SCOTT - 1/21/2021

2 corporate representative.

3 MR. MORRIS: Fair enough. But he is

4 the only representative so...

5 MR. CLARK: Fair enough. I just

6 want that made -- stated for the record,

7 but I also object as to form.

8 MR. MORRIS: Got it.

9 A. It's a third-party beneficiary under

10 the agreements.

11 Q. And is that because of something you

12 read in the document, or is that just your

13 belief and understanding?

14 A. My belief and understanding.

15 Q. And is that belief and understanding

16 based on anything other than conversations with

17 counsel?

18 A. In -- in -- recently it has, but I

19 don't recall from previous interactions over

20 the years how we discussed that or how I came

21 to -- to understand that.

22 Q. Does HCLO [sic] HoldCo -- did -- in

23 your capacity as the sole director of HCLO

24 HoldCo Limited, are you aware of anything that

25 Highland Capital Management has done wrong in

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1 GRANT SCOTT - 1/21/2021

2 connection with the services provided under the

3 CLO management agreements?

4 MR. CLARK: Objection, form.

5 A. I -- I don't -- I don't -- I

6 don't -- your answer's no.

7 Q. In your capacity as the director of

8 CLO HoldCo Limited, are you aware of any

9 default or breach under the CLO management

10 agreements that -- that Highland Capital

11 Management has caused?

12 MR. CLARK: Objection, form.

13 A. We have raised the issue about

14 ongoing sales in various -- I'm not sure

15 whether they represent a technical breach,

16 though.

17 Q. Okay. Are you aware of any

18 technical breach?

19 MR. CLARK: Objection, form.

20 A. No.

21 Q. I'm sorry. You said, no, sir?

22 A. My answer's no.

23 Q. Thank you. Do you know who made the

24 decision to cause the CLO HoldCo Limited entity

25 to invest in the CLOs that are managed by

Page 76

1 GRANT SCOTT - 1/21/2021

2 making an investment in a CLO that wasn't

3 managed by Highland?

4 A. No.

5 Q. Is there any particular reason why

6 you haven't given that any consideration?

7 A. That hasn't been my role. That's

8 not my expertise. That's been something

9 Highland has done and, quite frankly, over the

10 years brilliantly so, no.

11 Q. You're aware that HCM, L.P., has

12 filed for bankruptcy, right?

13 A. Yes.

14 Q. When did you learn that Highland had

15 filed for bankruptcy?

16 A. After the fact sometime in late --

17 late 2019.

18 Q. Since the bankruptcy filing, have

19 you made any attempt to sell CLO HoldCo

20 Limited's position in any of the CLOs that are

21 managed by Highland?

22 A. No.

23 Q. So notwithstanding the bankruptcy

24 filing, you as the director haven't made any

25 attempt to transfer out of the CLOs that are

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1 GRANT SCOTT - 1/21/2021

2 Highland Capital?

3 A. The select -- ultimately, I had to.

4 Q. I thought you testified earlier that

5 you didn't make decisions as to investment. Do

6 I have that wrong?

7 A. The selection.

8 Q. Okay.

9 A. I -- I'm --

10 Q. So -- so explain to me --

11 A. I have to approve -- I have to

12 approve the selection. I'm sorry. But the

13 people making -- I was putting that in the camp

14 of the people that make the selection.

15 Q. Okay. Do you know if -- do you know

16 if there are CLOs in the world that exist that

17 aren't managed by Highland Capital Management?

18 MR. CLARK: Objection, form.

19 A. Are there CLOs in the -- in the

20 world that are not --

21 Q. Yes.

22 A. Yes. It's -- it's a well-known --

23 it's a well-known --

24 Q. In your capacity as the director of

25 CLO HoldCo Limited, did you ever consider

Page 77

1 GRANT SCOTT - 1/21/2021

2 managed by Highland, correct?

3 A. Correct.

4 Q. Did you ever give any thought to

5 exiting the CLO vehicles that were managed by

6 Highland in light of its bankruptcy filing?

7 A. No.

8 Q. Have you ever discussed with

9 Mr. Seery anything having to do with the

10 management -- withdrawn.

11 Have you ever discussed with

12 Mr. Seery any aspect of the debtor's management

13 of the CLOs in which CLO HoldCo Limited is

14 invested?

15 A. No.

16 Q. You mentioned earlier a request to

17 stop trading. Do I have that right?

18 A. Yes.

19 Q. Okay. And are you aware that a

20 letter was written purportedly on behalf of CLO

21 HoldCo Limited in which a request to stop

22 trading was made?

23 A. As a cos- -- yeah. Yes.

24 Q. Okay. Have you ever seen that

25 letter before?

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1 Q. How did you form your opinion that
2 the debtor doesn't have the expertise to
3 execute trades on behalf of the CLOs today?
4 What's the basis for that belief?

5 A. I -- as I understood it, the -- the
6 people historically making that decision were
7 no longer making that decision.

8 Q. Who besides Mr. Dondero --
9 withdrawn.

10 Who are you referring to?

11 A. Well, Mr. Dondero is one. I don't
12 know the names, but I -- I understood it to
13 mean that the group previously responsible, for
14 exam- -- for example, Hunter Covitz, including
15 Hun- -- him, were no longer involved in the
16 decision-making process, but...

17 Q. How did you -- how -- how -- who
18 gave you the information that led you to
19 conclude that Hunter Covitz was no longer
20 involved in the decision-making process?

21 A. Specifically him and that name being
22 mentioned, I -- I -- I wasn't informed of his
23 speci- -- him -- him being removed. I was
24 under the impression that the team that had
25

GRANT SCOTT - 1/21/2021

1 previously been doing that was no longer doing
2 it.

3 Q. And what gave you that impression?

4 A. Was communications I had with my
5 attorney.

6 Q. Okay. Is there any source for your
7 information that led you to conclude that the
8 team was no longer there that was able to
9 engage in the trades on behalf of the CLOs
10 other than your attorneys?

11 A. Well, this -- this letter -- I -- I
12 think the answer is no.

13 Q. Thank you. Do you know if Jim -- do
14 you have an opinion or a view as to whether Jim
15 Seery is qualified to make trades?

16 A. This --

17 MR. CLARK: Objection, form.

18 A. I don't know -- I spoke to Jim Seery
19 earlier this week. You -- you asked me whether
20 I had his number. I said I did. That's only
21 because he called me. My phone rang with his
22 number. It was a number I did not recognize,
23 it was not in my contacts, but he left me a
24 voice mail so I called him back. Then I

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1 updated my contacts to -- to add his name so
2 now I have his name. And during that
3 conversation he informed me that he did have
4 that expertise --
5 Q. And --
6 A. -- without me making any inquiry.
7 He volunteered that.
8 Q. But you hadn't made any inquiry
9 prior to the time that you authorized the
10 sending of this letter; is that fair?
11 A. That's correct.
12 Q. Do you know whether Mr. Seery, in
13 fact, engaged in transactions on behalf of the
14 debtor since he was appointed back in January?
15 A. I do not.
16 Q. Did you ask that question prior to
17 the time you authorized the sending of this
18 letter?
19 A. I did not.
20 Q. Can you identify a single
21 transaction that Jim Seery has ever made that
22 you disagree with?
23 A. No.
24 Q. Can you identify any transaction

1 GRANT SCOTT - 1/21/2021

2 that the debtor made on behalf of any of the

3 CLOs since the time that you understand

4 Mr. Dondero left Highland that you disagree

5 with?

6 A. No.

7 Q. Did you have any discussion with any

8 representative of any of the entities listed on

9 this document where they told you they believe

10 Jim Seery didn't have the expertise to engage

11 in transactions on behalf of the whole -- of

12 the CLOs?

13 A. You -- your question -- I'm -- I'm

14 sorry. I'm trying to be -- I'm trying to be a

15 hundred perc- -- I'm trying to be accurate

16 here.

17 Q. Let me interrupt you and just say,

18 I'm very grateful for your testimony. I know

19 this is not easy, and I do believe that you're

20 earnestly and honestly trying to answer the

21 questions the best you can. So no apologies

22 necessary anymore. If you need me to repeat

23 the question or rephrase it, just say that,

24 okay?

25 A. Please -- yes.

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1 GRANT SCOTT - 1/21/2021

2 there.

3 BY MR. MORRIS:

4 Q. Do you see the request that's in the

5 last sentence?

6 A. Yes.

7 Q. Is that the same thing that

8 Mr. Dondero told you should happen, that --

9 that there should be no further CLO

10 transactions at least until the issues raised

11 and addressed by the debtor's plan were

12 resolved substantively?

13 A. Yes.

14 Q. Is there anything that he said

15 that's inconsistent with the request that's

16 made here?

17 MR. CLARK: Objection, form.

18 A. This -- and can you -- can you show

19 me earlier parts?

20 Q. Of course. You know what, I'll

21 withdraw the question.

22 And let me see if I can do it this

23 way: In your discussion with Mr. Dondero, did

24 he indicate that he had seen a draft of this

25 letter?

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GRANT SCOTT - 1/21/2021

substance of this particular letter?

A. Jim Dondero described why he believed sales being made on an ongoing basis after a request was made to stop was improper.

Q. Do you -- do you rely on what Mr. Dondero said to you during that phone call on December 21st in -- in deciding to join in this particular letter?

A. No.

Q. Did you only then rely on the information you obtained from counsel?

A. Yes. I -- I -- I -- I considered this letter to be nearly the most gentle request imaginable amongst lawyers to maintain the status quo.

Q. And the request that's made in this letter is perfectly consistent with what Mr. Dondero told you on the 21st of December, correct?

A. I don't -- no.

Q. How --

MR. MORRIS: Can we go to the end of this letter, please. All right. Right

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1 GRANT SCOTT - 1/21/2021

2 A. No. And I didn't -- I didn't have a
3 discussion with him. I -- I merely listened to
4 him. There was no -- I -- I had no input to
5 the conversation.

6 Q. Okay. I -- I did -- I didn't --
7 I -- I appreciate that. So he called you; is
8 that right?

9 A. We -- we called in.

10 Q. Oh, was it --

11 A. I --

12 Q. Was it --

13 A. I don't know --

14 Q. Was it --

15 A. I don't know the sequence of the
16 calls. I'm sorry.

17 Q. Was there anybody on the call other
18 than you and Mr. Dondero, the call that you're
19 describing on December 21st?

20 A. Yes, my attorney and an attorney --
21 I believe the attorney that signed this letter.

22 Q. Okay. And I just want to focus on
23 what Mr. Dondero said. Did he -- did he say
24 during the call that Highland should not be
25 engaging in any further CLO transactions?

EXHIBIT 17

Grant Scott

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

In Re:

Case No.

HIGHLAND CAPITAL MANAGEMENT L.P.,

19-34054

Debtor,

Chapter 11

HIGHLAND CAPITAL MANAGEMENT,

Adversary No.

L.P.,

21-03003-sgi

Plaintiff,

Vs.

JAMES D. DONDERO,

Defendant.

Virtual Zoom Deposition of Grant Scott

Tuesday, June 1, 2021

At 2:00 p.m.

Reported by LeShaunda Cass-Byrd, CSR, RPR

TSG Job No. 194692

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1 Grant Scott
2 GRANT SCOTT,
3 having been first duly sworn, was examined and
4 testified as follows:
5 EXAMINATION
6 BY MR. MORRIS:
7 Q. Good afternoon, Mr. Scott.
8 A. Good afternoon, John.
9 Q. Okay. As you recall, my name is John
10 Morris. I'm an attorney with Pachulski Stang Ziehl &
11 Jones. We represent Highland Capital Management LP, a
12 debtor in a bankruptcy case that is pending in the
13 Northern District of Texas.
14 Do you recall any of that?
15 A. Yes.
16 Q. Okay. And we are here today for your
17 deposition, and I appreciate your compliance with the
18 subpoena. Just a few ground rules to remind you, I'm
19 going to ask you a series of questions, and it's
20 important that you allow me to finish my question
21 before you begin your answer; is that fair?
22 A. Yes.
23 Q. And I will attempt to give you the same
24 courtesy, but if for some reason I step on your words,
25 just let me know that because I don't mean to cut you

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1 Grant Scott
2 A. Yes.
3 Q. So today's deposition concerns a particular
4 motion that the debtor filed recently where the debtor
5 is seeking to hold certain individuals and entities in
6 contempt of court. Have you seen or reviewed the
7 debtor's motion that was filed?
8 A. I have seen the e-mails which I kept, but I
9 have not read them.
10 Q. Okay. I want to just begin with some
11 background.
12 MR. MORRIS: And then I would ask Ms.
13 Canty to put up what we will mark as
14 Exhibit -- you know, let's pick up the
15 numbering from this morning, La Asia. Did
16 we use 7 this morning?
17 Actually, this is going to be Exhibit
18 1. It's the same document that we had this
19 morning.
20 MS. CANTY: Yes.
21 MR. MORRIS: We will call it Exhibit
22 1, and it's an organizational chart. If we
23 can just put that on the screen.
24 (Deposition Exhibit 1 was marked for
25 identification.)

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1 Grant Scott
2 off. Okay?
3 A. Okay.
4 Q. If there's anything that I ask you that you
5 do not understand, will you let me know?
6 A. Yes, sir.
7 Q. If you need a break at any time, will you
8 let me know?
9 A. Yes.
10 Q. Okay. Because this deposition is being
11 conducted remotely, we are going to be putting
12 documents on the screen. I'm not attempting to trick
13 you in any way. If you believe there is any of
14 portion of a document that you need to see, either to
15 put something in context or to refresh your
16 recollection, I encourage to let me know that, and I
17 will be happy to accommodate you. Okay?
18 A. Okay.
19 Q. Okay. Have you seen the subpoena that the
20 debtors served on your lawyer in this case?
21 A. The one relating to my deposition?
22 Q. Correct.
23 A. Yes.
24 Q. And are you here today pursuant to that
25 subpoena?

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1 Grant Scott
2 BY MR. MORRIS:
3 Q. Okay. Have you seen this before,
4 Mr. Scott?
5 A. Yes.
6 Q. Do you know what it is?
7 A. It's the -- yes. The DAF CLO HoldCo
8 structure chart.
9 Q. And this is structure chart that you
10 produced in response to the subpoena; is that right?
11 A. Correct.
12 Q. You are familiar with the gentleman named
13 Mark Patrick; is that right?
14 A. Yes.
15 Q. Is it your understanding that Mr. Patrick
16 was one of the individuals that helped establish the
17 hierarchy that is depicted on Exhibit 1?
18 A. Yes.
19 Q. And what is the basis for that
20 understanding?
21 A. That goes back many years to the
22 origination of my role.
23 Q. Okay. And do you recall that you assumed
24 your role in or around 2012?
25 A. Yes.

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1 Grant Scott

2 Q. Okay. Did you know Mr. Patrick prior to

3 the time that you assumed your role?

4 A. I did not.

5 Q. Okay. Do you know -- withdrawn.

6 Do you have any knowledge as to whether

7 anybody other than Mr. Patrick helped establish the

8 hierarchy that is depicted on Exhibit 1?

9 A. There was a law firm name that came to

10 mind, and there was an expert, I gather, a lawyer that

11 was familiar with charitable entities that I believe

12 was involved.

13 Q. Can you identify any -- withdrawn.

14 At the time that you understood Mr. Patrick

15 had helped to create this hierarchy, did you

16 understand who employed Mr. Patrick?

17 A. Yes. I believe so.

18 Q. Who did you believe Mr. Patrick worked for

19 at that time?

20 A. Highland Capital Management.

21 Q. Can you identify any other person at

22 Highland Capital Management who was involved in the

23 creation of this hierarchy?

24 A. No.

25 Q. Okay. Now for looking at the hierarchy

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1 Grant Scott

2 members of some of those organizations.

3 Q. And would they be the ones that are

4 labelled as third parties or as supporting

5 organizations?

6 A. The -- the third party organizations.

7 And -- and possibly the supporting organizations.

8 Q. Do you know what the difference is between

9 a third party and a supporting organization as those

10 phrases are used on Exhibit 1?

11 A. I don't recall anymore what the delineation

12 is between those two.

13 Q. Okay. Do you hold any position today with

14 any of the entities that are depicted on Exhibit 1?

15 A. I do not -- I do not believe so. Well, I

16 believe technically, I'm still -- I may still be a

17 director of CLO HoldCo, but I -- I'm not certain of

18 the status as of today.

19 Q. Is there a particular reason why you may

20 remain today as a director of CLO HoldCo Limited?

21 A. I don't know if the -- I don't know if the

22 transfer after my resignation has been completely

23 finalized, and I haven't -- yeah. I don't know how

24 close it is to being completely finalized. I'm not --

25 I'm not sure.

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1 Grant Scott

2 here, for the period for approximately 10 years prior

3 to March 24th, 2021, you served as the managing member

4 of the charitable DAF GP, LLC, correct?

5 A. Correct.

6 Q. And for approximately 10 years prior to

7 March 30 -- 20 -- withdrawn.

8 For approximately 10 years prior to March

9 24th, 2021, you were the sole director of charitable

10 DAF HoldCo, LTD, correct?

11 A. Correct.

12 Q. And for approximately 10 years prior to

13 March 24th, 2021, you were the sole director of

14 charitable DAF Fund LP, correct?

15 A. I believe that is correct.

16 Q. And for approximately 10 years prior to

17 March 24, 2021, you served as the sole director of CLO

18 HoldCo Limited, correct?

19 A. Yes. That is correct.

20 Q. Did you serve in any capacity for any other

21 entity that is depicted on this sheet at any time

22 prior to March 24th, 2021?

23 A. If you go -- if you look at the top of that

24 chart where it's directed at the charitable giving

25 components, I had some involvement with various

Page 13

1 Grant Scott

2 Q. But your intent is to resign as the

3 director of CLO HoldCo Limited; is that right?

4 A. Yes.

5 Q. And the only reason that that hasn't

6 happened yet, is it fair to say, is for administrative

7 reasons?

8 MR. BRIDGES: Objection. Assumes

9 facts not in evidence.

10 BY MR. MORRIS:

11 Q. You can answer.

12 A. I --

13 Q. Withdrawn. I will ask a different

14 question.

15 Do you know why your intended resignation

16 from CLO HoldCo Limited has not yet become effective?

17 MR. BRIDGES: The same objection.

18 Facts not in evidence.

19 BY MR. MORRIS:

20 Q. You can go ahead.

21 MR. KANE: I object to form, also.

22 Grant, go ahead.

23 THE WITNESS: I do not.

24 BY MR. MORRIS:

25 Q. Okay. Do you hold any positions of any

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1 Grant Scott

2 kind today with any entity that you believe is either

3 directly or indirectly owned or controlled by

4 Mr. Dondero?

5 A. I don't believe so.

6 Q. Do you have -- I'm just going to explore

7 that for a little bit.

8 Do you know have -- do you know whether you

9 continue to HoldCo any position with any NexBank

10 entity?

11 A. I'm not in -- no, I don't have any

12 involvement with NexBank.

13 Q. Okay.

14 MR. KANE: Hey, John, can you shed a

15 little light on why that is relevant?

16 MR. MORRIS: I'm just trying to find

17 connections between Mr. Scott and

18 Mr. Dondero because I -- I just -- I

19 think -- I think the purpose of the

20 deposition is to try to -- to try to deduce

21 facts that are related to whether or not

22 Mr. Dondero is going to be a responsible

23 party under the contempt motion. So I'm

24 just looking for --

25 MR. KANE: I understand. I'm just

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1 Grant Scott

2 ahead, Grant.

3 (Reporter clarification.)

4 THE WITNESS: I believe so.

5 BY MR. MORRIS:

6 Q. And is it your understanding that Mr. Mark

7 Patrick replaced you in those capacities on or about

8 March 24th, 2021?

9 A. It's my understanding that on March 24th,

10 the management shares that I had previously -- that

11 had been in my name were transferred to him. I am not

12 sure how that impacts the current status in the

13 various other entities.

14 Q. Okay. During the time that you served as

15 the managing member of the charitable DAF GP LLC, that

16 entity had no officers or employees, correct?

17 A. I believe that is correct.

18 MR. KANE: Object to the form.

19 BY MR. MORRIS:

20 Q. And you served as the sole director of that

21 entity during the time that you served as the

22 director, correct?

23 A. I believe that is correct.

24 Q. And during the period of time that you

25 served as a director of charitable DAF HoldCo Limited,

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1 Grant Scott

2 trying to figure out Grant's -- you know,

3 whether he has a --

4 MR. MORRIS: That is all right. I'm

5 moving on anyway.

6 MR. KANE: Appreciate it.

7 BY MR. MORRIS:

8 Q. Now looking at the chart, Mr. Scott, I

9 believe you testified that you were either the

10 managing member or a director of each of the DAF

11 entities and CLO HoldCo Limited.

12 Do I have that right?

13 A. I believe that is correct.

14 Q. All right. Is it your understanding that

15 Mr. --

16 A. Excuse me. I am sorry. Currently or was?

17 Q. Was. Up until March 24th.

18 A. Okay. Correct.

19 Q. All right. Let me ask the question again

20 so it's clean.

21 Did you serve as either the managing member

22 or the director for each of the charitable DAF

23 entities and the CLO HoldCo Limited entity for

24 approximately 10 years prior to March 24th, 2021?

25 MR. KANE: Objection. Form. Go

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1 Grant Scott

2 you were the only person to serve in that capacity; is

3 that correct?

4 A. I believe so.

5 Q. And during the period that you served as

6 director of charitable DAF HoldCo Limited, that entity

7 had no officers or employees, correct?

8 A. I believe that is correct.

9 Q. During the time that you served as a

10 director of charitable DAF Fund LP, you were the sole

11 director of that entity, correct?

12 A. Correct.

13 Q. And during the time that you served as the

14 sole director of charitable DAF Fund LP, that entity

15 had no officers or employees, correct?

16 A. I believe that is correct.

17 Q. You served as the sole director of CLO

18 HoldCo Limited; is that right?

19 A. Yes. That is correct.

20 Q. And during the period that you served as

21 the sole director of CLO HoldCo Limited, that entity

22 had no officers or employees, correct?

23 A. That is correct.

24 Q. Is that why the DAF had certain agreements

25 with Highland Capital Management LP pursuant to which

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1 Grant Scott

2 HCMLP provided back office and advisory and investment

3 services?

4 MR. KANE: Objection. Form.

5 THE WITNESS: I think that is

6 correct.

7 BY MR. MORRIS:

8 Q. Do you recall that that DAF had agreements

9 with Highland Capital Management that were amended and

10 restated in 2014?

11 MR. KANE: Objection. Form.

12 THE WITNESS: I understand there were

13 various agreements over the years that had

14 been restated. I'm not entirely sure

15 anymore of the dates that we received

16 that --

17 MR. MORRIS: Okay. Let's mark --

18 THE WITNESS: I'm sorry?

19 MR. MORRIS: Let's mark as Exhibit

20 8 --

21 MR. BRIDGES: Objection. Objection.

22 Please let the witness answer his question.

23 MR. MORRIS: Let's mark this --

24 MR. BRIDGES: No. Please allow the

25 witness to continue his answer.

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1 Grant Scott

2 BY MR. MORRIS:

3 Q. Okay. Do you see that Mrs. Kim sends you

4 an e-mail on August 26th, 2014?

5 A. Yes. I see that.

6 Q. And do you see that she had attached for

7 your review and execution, drafts of an amended and

8 restated service agreement and amended and restated

9 advisory agreement and GP resolutions?

10 A. I do see that.

11 Q. Okay. Do you have any recollection as to

12 whose idea it was to amend and restate those

13 agreements at that moment in time?

14 A. I do not.

15 Q. Do you have any recollection as to why

16 those agreements were amended and restated at that

17 time?

18 A. No, I do not.

19 Q. Okay. Let's just scroll down and just show

20 Mr. Scott the agreements. I'm not going to ask

21 anything substantive about it. But do you see here is

22 the -- if we can stop right there -- the Amended and

23 Restated Service Agreement that is dated from the

24 first day of July, 2014, and it's between the DAF

25 Fund -- the charitable DAF Fund LP, the charitable DAF

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1 Grant Scott

2 BY MR. MORRIS:

3 Q. Grant, do you have anything else to add?

4 A. You had asked me -- you asked about a

5 specific date, I think, 2014. I just -- I don't know

6 what the dates are or were.

7 Q. That is what I heard you say. Is there

8 anything else that you have to add?

9 A. No, I don't -- I don't think so.

10 Q. I didn't think so either.

11 MR. MORRIS: Let's go to Exhibit 8,

12 please, the next document.

13 (Deposition Exhibit 8 was marked for

14 identification.)

15 MR. MORRIS: Okay. If we could just

16 scroll down a little bit. Just to the

17 e-mail.

18 BY MR. MORRIS:

19 Q. All right. Were you familiar with Caitlin

20 Nelson and Helen Kim and Thomas Surgent and David Klos

21 in and around August 2004?

22 A. I believe they were all Highland employees.

23 Q. Okay.

24 MR. MORRIS: Can we just scroll up to

25 the next e-mail, please?

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1 Grant Scott

2 GP LLC, as well as Highland Capital Management LP.

3 Do you see that?

4 A. I do see that.

5 Q. Do you recall that the entity that is

6 commonly referred to as the DAF had a service

7 agreement with Highland Capital Management LP?

8 A. I believe that is correct. Yes.

9 Q. Do you recall whether -- whether the

10 service agreement was ever the subject of any

11 negotiations?

12 A. I don't know.

13 Q. Did you participate in any negotiations

14 concerning the service agreement that was entered --

15 entered in between the entity known as the DAF and

16 Highland Capital Management LP?

17 MR. KANE: Objection to form.

18 John, will you clarify the time

19 period?

20 BY MR. MORRIS:

21 Q. Right here. 2014.

22 A. Sir, I don't recall anything about this

23 with respect to 2014.

24 Q. Do you know if -- if the agreement was ever

25 amended at any time after 2014? And when I use the

Page 22

1 Grant Scott

2 phrase "agreement," I'm specifically referring to the

3 Amended and Restated Service Agreement that we are

4 looking at.

5 A. I believe -- I think there was a further

6 amended and restated agreement.

7 Q. Okay. Did you participate in any

8 negotiations concerning that further amended and

9 restated agreement?

10 A. I don't remember.

11 Q. Do you remember offering any comments

12 concerning any subsequent amendment or restatement?

13 A. I don't -- I don't remember.

14 Q. Did you ever hire outside counsel to assist

15 you in the negotiation of any service agreements with

16 Highland Capital Management LP?

17 A. I did not.

18 Q. Do you -- do you recall who prepared each

19 of the service agreements to which the DAF was a

20 party?

21 A. I don't remember.

22 Q. To the best of your recollection, would it

23 have been inhouse counsel at Highland Capital

24 Management?

25 MR. KANE: Objection. Form.

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1 Grant Scott

2 A. I believe so.

3 Q. And the agreements that you signed on

4 behalf of that entity, were any of them -- were there

5 multiple drafts of any such agreement?

6 A. There were frequently multiple drafts or

7 agreements. But I just don't remember them.

8 Q. Do you remember whether you personally ever

9 provided any comments to any particular draft?

10 A. I do not.

11 Q. Let me ask you this: Are you familiar with

12 the phrase "arm's length negotiations"?

13 A. Yes.

14 Q. And can you tell me what your understanding

15 is of an arm's length negotiation?

16 A. Well, it would depend on the nature of the

17 parties. For example, a -- two strangers would

18 have -- arm's length would differ from the nature of

19 an agreement between parties maybe having fiduciary or

20 related obligations.

21 Q. Let me ask you this --

22 A. I don't know what the black -- I don't know

23 what the blackball definition is to that term.

24 Q. Would you agree that arm's length

25 negotiations take place between two parties that are

Page 23

1 Grant Scott

2 THE WITNESS: I don't -- I don't

3 know.

4 BY MR. MORRIS:

5 Q. Can you recall the name of any law firm

6 that was involved in the drafting or the negotiation

7 of any service agreement between the entity known as

8 the DAF and Highland Capital Management LP?

9 MR. KANE: Objection. Form.

10 THE WITNESS: I don't remember any.

11 BY MR. MORRIS:

12 Q. Can you recall during your tenure as the

13 managing member of the DAF GP LLC, whether there was

14 any particular term or provision in any service

15 agreement that was the subject of negotiation or even

16 discussion?

17 A. I don't remember those -- any of those

18 discussions.

19 Q. Do you know if they took place or you just

20 can't remember them?

21 A. I just can't remember them.

22 Q. Do you recall ever seeing multiple drafts

23 of any service agreement that you -- withdrawn.

24 Did you personally sign service agreements

25 on behalf of the entity known as the DAF?

Page 25

1 Grant Scott

2 acting out of their own self interest?

3 MR. KANE: Objection.

4 MR. BRIDGES: Objection to form and

5 foundation.

6 BY MR. MORRIS:

7 Q. Withdrawn. Withdrawn.

8 MR. BRIDGES: Calls for a legal

9 opinion.

10 BY MR. MORRIS:

11 Q. Mr. Scott, do you believe that the service

12 agreements between the entity known as the DAF and

13 the -- and Highland Capital Management LP were arm's

14 length agreements?

15 MR. BRIDGES: Objection. Again, lack

16 of foundation, calls for a legal opinion.

17 MR. MORRIS: Okay. I'm not asking

18 for a legal opinion. I'm asking for

19 Mr. Scott's view of it, so I will try one

20 more time.

21 BY MR. MORRIS:

22 Q. Mr. Scott, do you believe that the service

23 agreements between the DAF and HCMLP were the subject

24 and result of arm's length negotiations?

25 MR. BRIDGES: Objection. Foundation,

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1 Grant Scott

2 A. Why did I send it at the end of January?

3 Q. What caused you to send this e-mail at that

4 moment in time?

5 A. Well, I mean, there are a couple of

6 reasons. It was -- it was necessary that I do it, and

7 the time seemed right in view of the events in

8 January. It was like a good transition point from my

9 perspective.

10 Q. And why was it necessary at that time?

11 A. Well, there was --

12 MR. BRIDGES: Objection. Assumes

13 facts not in evidence.

14 BY MR. MORRIS:

15 Q. You can answer.

16 A. I previously testified during this

17 deposition that throughout 2020, the desire -- or,

18 rather, the appropriateness of my wanting to resign

19 was expanding, and based on what had happened in

20 January and December as well, but mostly January, I

21 basically just did a critical mass on whether I could

22 sustain my role, given my commitments to my existing

23 firm and given my discussions with the managing

24 members of my existing firm.

25 And it -- there was just no way I could

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1 Grant Scott

2 John Kane.

3 THE WITNESS: Yes. I didn't know who

4 best to inform my decision.

5 BY MR. MORRIS:

6 Q. And why did you think that Mr. Dondero

7 would know?

8 MR. BRIDGES: Objection. Asked and

9 answered.

10 THE WITNESS: He knows a lot more

11 about the workings of -- I mean, it was --

12 CLO HoldCo and the charitable admission was

13 something that he worked to develop with

14 others 10 years ago, and he was committed

15 to the charity and he knew all of the

16 players and I just -- I guess I just

17 assumed he would know where to direct it.

18 BY MR. MORRIS:

19 Q. Did you ever ask?

20 A. He knew how to effectuate -- he knew how to

21 effectuate -- or I thought he knew how to effectuate

22 my resignation by directing it to the appropriate

23 personnel.

24 Q. Did you ever ask him who it should be

25 directed to?

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1 Grant Scott

2 continue with the time commitment required. I had

3 made various promises and representations to my firm

4 throughout 2020 that the bankruptcy would be handled

5 relatively efficiently and wouldn't require a great

6 deal of time commitment. And then I guess the straw

7 that broke the camel's back was the second lawsuit,

8 meaning me personally, and it just -- from a personal

9 standpoint, the most significant factor was just my --

10 my being overwhelmed, trying to sustain my career and

11 engage in what seem like the 2021 that was going to

12 involve my having to defend two lawsuits. And I felt

13 like I got CLO HoldCo through the bankruptcy and then

14 that was a good jumping off point.

15 Q. What -- why did you send this e-mail to

16 Mr. Dondero?

17 A. I knew, or at least I reasonably believed

18 he would know where to who to send it to because I

19 wasn't exactly sure.

20 Q. So you were the managing member of the

21 general partnership and the director of the other DAF

22 entities and CLO HoldCo Limited, and you were not sure

23 who to send your notice of resignation to.

24 Do I have that right?

25 MR. KANE: Objection. Form. That's

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1 Grant Scott

2 A. No.

3 Q. Looking at the third paragraph, it says,

4 quote, my resignation will not be effective until I

5 approve of the indemnification provisions and obtain

6 any and all releases.

7 Do you see that?

8 A. Yes.

9 Q. Why did you condition the effectiveness of

10 your resignation on those things?

11 A. Well, although I'm a patent attorney and

12 basically just a technical writer that doesn't deal

13 with legal issues all of the time, it seemed like

14 appropriate language.

15 I have a number of outstanding litigations

16 where I am named personally, and the actions that I

17 took which resulted in my being sued were actions I

18 took on behalf of CLO HoldCo solely in that position,

19 and so I thought just to have the appropriate notice

20 that I would like indemnification to help -- to help

21 deal with those litigation matters. That is all.

22 Q. Did anybody suggest to you at any time

23 prior to the time that you sent this e-mail, that any

24 of the DAF entities or CLO HoldCo Limited might have

25 claims against you?

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1 Grant Scott

2 A. No. No.

3 Q. Were you concerned that Mr. Dondero or

4 anyone acting on his behalf might sue you?

5 A. No.

6 Q. Did Mr. Dondero ever threaten to sue you?

7 A. No.

8 Q. Did you ever obtain the Indemnity provision

9 and any and all necessary releases that you asked for

10 in this e-mail?

11 A. Not yet.

12 Q. And what does that mean?

13 A. I understand that those provisions are --

14 indemnification proposals are in the works, I think.

15 Q. And do you know who is negotiating --

16 withdrawn.

17 Is somebody negotiating those

18 indemnification and release provisions on your behalf?

19 A. My -- my attorney would be.

20 Q. And do you know if your attorney is

21 negotiating with anybody concerning potential

22 indemnification and release provisions for you?

23 A. I don't know specifically, no.

24 Q. Do you know if he is -- if -- from whom do

25 you want to obtain releases?

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1 Grant Scott

2 A. I would like to, yes.

3 Q. Did you ever have any discussion with

4 Mr. Dondero about the releases that you wanted?

5 A. No.

6 Q. Have you communicated with Mr. Dondero

7 since -- since you sent this e-mail?

8 A. Yes.

9 Q. Other than the birth date text that he sent

10 to you, have you spoken with him?

11 A. In February.

12 Q. So you haven't spoken to him since then?

13 A. That is correct.

14 Q. What did you speak to him about in

15 February?

16 A. He called me to ask me if I knew anything

17 about in particular -- I think it might have been an

18 asset of CLO HoldCo, if I was aware of whether it had

19 been purchased or sold, and I just told them I didn't

20 know what he was -- I didn't know what -- I didn't

21 know what he was referring to. That was the last

22 conversation that we had.

23 Q. Can I refer to the period from the date of

24 this --

25 MR. MORRIS: Actually, let's look

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1 Grant Scott

2 MR. BRIDGES: Objection. Facts not

3 in evidence.

4 BY MR. MORRIS:

5 Q. Withdrawn.

6 When you refer to any and all necessary

7 releases, who did you want to obtain releases from?

8 A. CLO HoldCo.

9 Q. Anybody else?

10 A. Well, I mean, and -- and the related

11 entities in that structure chart that you showed.

12 I'm -- I'm -- understand that to me, that is just

13 boilerplate legal language to put in a resignation,

14 you know, just to cross the T's, dot the I's, so to

15 speak. I'm not anticipating that will be -- that will

16 be a problem. I am sorry.

17 Q. You asked for this more than three months

18 ago now, right?

19 A. Correct.

20 Q. Do you know why you haven't gotten what you

21 asked for more than three months ago?

22 MR. BRIDGES: Objection. Form.

23 THE WITNESS: I -- I don't.

24 BY MR. MORRIS:

25 Q. But you still want the releases, right?

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1 Grant Scott

2 at -- let's scroll up a little bit, please.

3 BY MR. MORRIS:

4 Q. Did Mr. Dondero ever try to talk you out of

5 resigning?

6 A. No.

7 MR. MORRIS: Can you scroll up?

8 THE WITNESS: I -- I am sorry. I

9 need to correct that. I had conversations

10 with him where I had expressed, not so much

11 a desire to resign, but a belief that it --

12 it made strategic sense or was appropriate.

13 And it had to do with this issue of my

14 independence, and he suggested that family

15 members and friends are not precluded from

16 occupying positions of trust like trustees

17 and things like that, and that there was

18 nothing per se wrong with my -- my activity

19 with CLO HoldCo by virtue of being a friend

20 of his. So in that sense, he was trying to

21 talk me out of that, I guess.

22 BY MR. MORRIS:

23 Q. When did that conversation take place?

24 A. We had a number of those in 2020 and

25 January of 2021.

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1 Grant Scott

2 MR. MORRIS: Can we scroll up just a

3 little bit on this e-mail, please?

4 MR. BRIDGES: May I ask what exhibit

5 number this is? I've lost track. I am

6 sorry.

7 MS. CANTY: This is Exhibit 5 from

8 earlier. We are continuing the numbers.

9 So this was marked as Exhibit 5 in this

10 morning's deposition.

11 MR. BRIDGES: Thank you so much.

12 BY MR. MORRIS:

13 Q. Do you see where Mr. Dondero wrote to

14 you -- it's just of above the yellow highlighting

15 at -- 9:57 a.m. This is the next day. Quote, you

16 need to tell me ASAP that you have no intent to divest

17 assets.

18 Do you see that?

19 A. Yes.

20 Q. Did Mr. -- do you have any understanding as

21 to why he said that to you?

22 A. I know that he was mistaken in that

23 statement.

24 Q. Right. Do you have any understanding as to

25 whether Mr. Dondero had the ability to stop you from

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1 Grant Scott

2 being sold?

3 MR. BRIDGES: Object to form.

4 MR. KANE: Objection. Asked and

5 answered.

6 BY MR. MORRIS:

7 Q. You can answer.

8 A. No. I had -- I had no idea what he was --

9 Q. Okay. Let's -- let's -- can we -- can we

10 call the period of time between the time you sent this

11 notice of your intent to resign in March 24, 2021 as

12 the interim period?

13 A. Sure.

14 Q. And that's the period during which you had

15 expressed your intent to resign, but your resignation

16 had not yet become effective; is that fair?

17 A. I guess it was the period of time when --

18 yes. I guess that is correct.

19 Q. Okay. Is it fair to say that there were

20 certain things you needed to do during the interim

21 period on behalf of CLO HoldCo and the DAF entities

22 before -- even before your resignation became

23 effective?

24 A. Yes.

25 Q. Okay. Was someone designated to act as

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1 Grant Scott

2 selling assets?

3 A. No. It wasn't -- it was a misunderstanding

4 about what the word "divest" meant in the subject

5 line.

6 Q. And did you understand that until you

7 corrected him, he was concerned and he expressed the

8 concern to you not to sell any assets?

9 MR. KANE: Objection to form.

10 THE WITNESS: No. It had -- I am

11 sorry. There -- the term "divest" was

12 maybe not a term I should have used.

13 However, my understanding was that my -- my

14 status at CLO HoldCo had a property related

15 aspect to it. And I used that term to

16 emphasize that I would need to -- that that

17 property aspect would need to be

18 transferred, meaning to the next entity or

19 person. He mistook it as something being

20 sold. It had nothing to do with that.

21 That is all.

22 BY MR. MORRIS:

23 Q. I understand that. But did you

24 understand -- did you have any understanding as to

25 what interest he had and whether or not assets were

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1 Grant Scott

2 your liaison with respect to matters concerning the --

3 the DAF entities and the CLO HoldCo during the interim

4 period?

5 MR. KANE: Objection. Form.

6 THE WITNESS: I had conversations

7 with Mark Patrick in February when I came

8 to -- to believe he -- he would be director

9 elect, so to speak, in terms -- in terms of

10 moving forward.

11 BY MR. MORRIS:

12 Q. During the interim period, did you have any

13 understanding as to whether Mr. Patrick had any

14 authority to act on behalf of any of the DAF entities

15 or CLO HoldCo?

16 MR. KANE: Objection. Form.

17 THE WITNESS: I came to believe he

18 did, upon signing the management shared

19 transfer agreement.

20 BY MR. MORRIS:

21 Q. Okay. So that was -- that was on or about

22 March 24th, 2021, right?

23 A. Correct.

24 Q. So I'm asking just about the interim period

25 between January 31st, 2021 when you sent your notice

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1 Grant Scott

2 of intent to resign, and March 24th. That is what I

3 am defining as the interim period.

4 So with that understanding, did you have

5 any reason to believe that Mr. Patrick had any

6 authority to act on behalf of any of the DAF entities

7 or CLO HoldCo during the interim period?

8 A. Well, it was -- he was part of a group of

9 entity -- a group of individuals that were with an

10 entity that had taken over from -- from Highland, and

11 so in -- certainly in that capacity, he -- as -- as

12 occurred for 10 years or more prior, that -- in that

13 role, you certainly had rights to -- to perform or to

14 act on CLO's behalf here.

15 Q. And what entity are you referring to?

16 A. I think it's the Highgate Consulting Group,

17 the Highland employees that took over -- or that

18 created that entity.

19 Q. And did the -- do you have an understanding

20 as to whether the Highgate Employment Group succeeded

21 to Highland Capital Management LP in the shared

22 services capacity or in the investment advisory

23 capacity or something else?

24 MR. BRIDGES: Object to form.

25 (Reporter clarification.)

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1 Grant Scott

2 A. They were conversations about the workings

3 with outside counsel to arrange the -- to arrange the

4 transfer of my responsibilities to another person or

5 entity at first, and then I came to learn that that

6 person was -- was -- would be Mark.

7 Q. Do you know who selected mark?

8 A. I do not.

9 Q. Do you know how Mark was selected?

10 A. I -- I do not.

11 Q. Did you ever ask Mark how he was selected?

12 A. I did not.

13 Q. Did you ever ask Mark who selected him?

14 A. I did not.

15 Q. Did you ever ask anybody at any time how

16 Mr. Patrick was selected to succeed you?

17 A. No, I did not.

18 Q. Did you ask anybody at any time as to who

19 made the decision to select Mr. Patrick to succeed

20 you?

21 A. No, I did not.

22 MR. BRIDGES: Objection. Facts not

23 in evidence and foundation.

24 BY MR. MORRIS:

25 Q. Okay. Do you have any understanding today,

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1 Grant Scott

2 THE WITNESS: I'm not entirely sure

3 of that.

4 BY MR. MORRIS:

5 Q. So is --

6 A. But he -- but --

7 Q. I am sorry. Did you finish your answer?

8 A. I'm not -- I'm not sure of the delineation

9 between the two.

10 Q. So on what basis did you believe that

11 Mr. Patrick had the authority to act on behalf of the

12 DAF entities and CLO HoldCo during the interim period?

13 MR. BRIDGES: Objection. Asked and

14 answered.

15 THE WITNESS: We had -- we had had a

16 number of conversations. And over the

17 course of a number of weeks, I came to -- I

18 came to understand that he would be the

19 director going forward. So...

20 BY MR. MORRIS:

21 Q. How did you come to that understanding?

22 A. Through the conversations that we had had,

23 I guess.

24 Q. What conversations did you have with Mr. --

25 were these conversations with Mr. Patrick?

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1 Grant Scott

2 as to who has the authority to select your --

3 withdrawn.

4 Do you have any understanding today, as to

5 who had the authority to select your replacement?

6 A. I do not.

7 MR. MORRIS: All right. Let's take a

8 short break. And I am certainly -- I'm

9 closer to the end than the beginning. It's

10 3:22 Eastern Time. Let's come back at

11 3:35, please, and hopefully I will be

12 finished by about 4, 4:15.

13 (Recess taken.)

14 BY MR. MORRIS:

15 Q. I want to go back, Mr. Scott, to the time

16 that you became appointed the managing member of the

17 general partnership and to the director of the other

18 DAF entities and CLO HoldCo. Do you remember how that

19 came to be?

20 A. My recollection is that various law firms

21 and Mark Patrick had a role in its creation and

22 configuration following some -- it's -- I believe it's

23 modeled after some expert -- expert in the field. I

24 am sorry. I don't know if I answered your question.

25 Q. You did not. So let me try it again. Do

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1 Grant Scott

2 you recall how it came to be that you assumed those

3 positions?

4 A. Ten years ago I accepted that role.

5 Q. And who offered the role to you?

6 A. Jim Dondero.

7 Q. Did -- did you communicate with anybody

8 other than Mr. Dondero concerning the opportunity that

9 he presented to you to assume these roles prior to the

10 time you accepted the position?

11 MR. KANE: Objection. Form.

12 BY MR. MORRIS:

13 Q. Withdrawn.

14 A. Possibly or --

15 Q. Withdrawn. Let me ask -- let me ask --

16 it's a good objection.

17 Mr. Scott, prior to the time that you

18 assumed your positions with the DAF entities and

19 CLO HoldCo, did you speak with anybody other than

20 Mr. Dondero, about the duties and responsibilities of

21 those positions?

22 MR. KANE: Objection to form.

23 THE WITNESS: The only thing that

24 comes to mind is Hunton & Williams. But

25 I -- I'm not sure. I don't know.

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1 Grant Scott

2 Do you see that?

3 A. Yes.

4 Q. And do you see that it's effective January

5 1, 2012?

6 And if we could go to the last page. And

7 is that your signature, sir?

8 A. That is correct.

9 Q. And is this the document that you signed on

10 March 12th, 2012, pursuant to which you became the

11 general partner of the DAF GP?

12 MR. KANE: Objection. Form.

13 THE WITNESS: It's not March 12th.

14 It's dated as March 21st, just to clarify,

15 but I believe so.

16 BY MR. MORRIS:

17 Q. I appreciate that. I'm going to ask the

18 question again, just because I was wrong and I want to

19 get it right.

20 Is this the document you signed on or about

21 March 21, 2012, pursuant to which you became the

22 managing member of the DAF GP, LLC?

23 A. I believe so.

24 Q. Okay. And you replaced Mr. Dondero in that

25 capacity; is that right?

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1 Grant Scott

2 BY MR. MORRIS:

3 Q. Do you have any memory of interviewing with

4 anybody?

5 A. I don't have any recollection of that, no.

6 Q. Did you submit a resume of any kind?

7 A. Possibly a CV. But I -- I just don't

8 remember anymore.

9 Q. Do you know who made the decision to select

10 you to serve in those capacities?

11 MR. KANE: Objection. Form.

12 THE WITNESS: I don't know.

13 BY MR. MORRIS:

14 Q. Did anybody -- withdrawn.

15 Did you meet with Patrick before or after

16 you assumed these roles?

17 A. It's going back 10 years. I -- I'm not

18 sure.

19 MR. MORRIS: Can we put up on the

20 screen a document that we marked this

21 morning. I believe it's Exhibit 2.

22 BY MR. MORRIS:

23 Q. And this is a document titled An Amended

24 and Restated Limited Liability Company Agreement of

25 Charitable DAF GP LLC.

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1 Grant Scott

2 A. Yes.

3 Q. And your recollection is that Mr. Dondero

4 presented the opportunity to you; is that right?

5 MR. KANE: Objection. Form.

6 THE WITNESS: Yes. I guess you could

7 call it an opportunity.

8 BY MR. MORRIS:

9 Q. And do you have any recollection as to

10 whether or not anybody else was involved in the

11 decision to offer the opportunity to you?

12 A. I -- I don't recall.

13 Q. Okay. We can take that down, please.

14 Do you recall whether Mr. Patrick was

15 involved in your selection as the replacement

16 management member of the DAF GP, LLC in 2012?

17 A. I have no recollection.

18 MR. KANE: Objection to form.

19 Yes. Okay.

20 BY MR. MORRIS:

21 Q. I want to go back to what we had defined

22 earlier as the interim period, and that was the period

23 between January 31st, 2021, when you sent in that

24 notice and March 24, 2021, when you transferred the

25 shares. That is what we were calling the interim

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1 Grant Scott

2 period, right?

3 A. Yes.

4 Q. Okay. Is it fair to say that Mr. Patrick

5 served as your primary contact with respect to matters

6 concerning CLO HoldCo and the DAF during the interim

7 period?

8 A. Yes.

9 Q. Okay. And, in fact, Mr. Patrick gave you

10 instructions on what to do for the DAF and the

11 CLO HoldCo on certain matters during the interim

12 period, correct?

13 MR. KANE: Objection to form.

14 THE WITNESS: Periodically, yes.

15 BY MR. MORRIS:

16 Q. I am sorry. What is the answer?

17 A. Periodically, yes.

18 Q. Okay. Did somebody ever tell you that you

19 should follow Mr. Patrick's instructions?

20 A. No, I don't believe so.

21 Q. And, Mr. Patrick, to the best of your

22 knowledge, didn't HoldCo any positions with any of the

23 DAF entities or CLO HoldCo Limited, correct?

24 MR. KANE: Objection to form.

25 MR. BRIDGES: Object to foundation.

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1 Grant Scott

2 Q. Did you sign any agreement on behalf of any

3 of the DAF entities or CLO HoldCo with the entity that

4 you are referring to as Highgate?

5 A. I'm not sure.

6 Q. Do you have any recollection at all of ever

7 signing any agreements in your capacity as the

8 authorized representative of any of the DAF entities

9 or CLO HoldCo and Highgate?

10 MR. KANE: Objection. Form.

11 THE WITNESS: I -- I don't recall.

12 BY MR. MORRIS:

13 Q. And I may have asked you this already. If

14 I have, I'm sure there will be an objection. But do

15 you recall if Highgate was providing services

16 equivalent to the shared services that Highland

17 previously provided, or was it providing investment

18 advisory services of the type Highland previously

19 provided?

20 MR. KANE: Objection to form.

21 MR. BRIDGES: Objection.

22 BY MR. MORRIS:

23 Q. You can answer.

24 A. I don't know the delineation of the

25 services they were providing.

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1 Grant Scott

2 BY MR. MORRIS:

3 Q. You can answer.

4 A. During the interim period?

5 Q. Correct.

6 A. I do not believe so.

7 Q. If Mr. Patrick didn't hold any positions,

8 why did you follow his instructions?

9 MR. BRIDGES: Objection.

10 MR. KANE: Objection. Go ahead,

11 sorry.

12 MR. BRIDGES: Facts not in evidence.

13 MR. KANE: And objection to form.

14 BY MR. MORRIS:

15 Q. You can answer, sir.

16 A. Yes. Well, there -- I mean, there was a

17 lot of activity that was required to transfer over

18 from how things had been handled under Highland, to

19 how they would now be handled under -- with the

20 services being provided by Highgate, and he was a

21 member, and he was the point person, I guess, and he

22 was my main interface to get those large numbers of

23 issues resolved.

24 There was -- you know, it was a very busy,

25 challenging time.

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1 Grant Scott

2 Q. Do you know whether during the interim

3 period, any entity other than Highgate was providing

4 services on behalf of any of the DAF entities or

5 CLO HoldCo?

6 A. Well, I knew from various wires that were

7 approved, that various entities were providing

8 services. Law firms, for example.

9 Q. But was there any -- any entity other than

10 Highgate that was providing any of the services that

11 had previously been provided by Highland?

12 A. Well, Highland provided a lot of legal

13 services. I don't know that Highgate had the same

14 capability. So I don't know how to answer that.

15 Q. All right. I'm going to try a different

16 way.

17 Before -- before 2021, the DAF entities had

18 both a shared services arrangement and an investment

19 advisory arrangement with Highland.

20 Do I have that right?

21 A. Yes.

22 Q. During the interim period, Highland was no

23 longer providing any of those services, correct?

24 A. That's what I understand, yes.

25 Q. Did anybody replace Highland in the

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1 Grant Scott

2 provision of those services during the interim period?

3 MR. BRIDGES: Objection, asked and

4 answered.

5 BY MR. MORRIS:

6 Q. You can answer, sir.

7 A. I mean, besides the services Highgate

8 were -- was -- were providing, I'm not sure.

9 Q. And -- and I do know that I've asked this

10 before, but now with that context: Do you know

11 whether Highgate was providing services of the shared

12 services type, or the investment advisory type, or you

13 just don't know?

14 MR. BRIDGES: Objection to the form.

15 THE WITNESS: At least I would think

16 mostly the shared services type.

17 BY MR. MORRIS:

18 Q. Okay. Is it your understanding that under

19 the shared services agreement, that Highgate had the

20 ability to make decisions on behalf of any of the DAF

21 entities or CLO HoldCo?

22 MR. BRIDGES: Objection.

23 MR. KANE: Objection to form.

24 MR. BRIDGES: Misstates testimony.

25 THE WITNESS: Yeah, my prior

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1 Grant Scott

2 fact, to be clear. I'm not asking for any legal

3 conclusions. I'm asking for your understanding as the

4 authorized representative of the DAF entities and

5 CLO HoldCo during the interim period.

6 So with that -- with that background as the

7 authorized entity, that -- withdrawn.

8 As the authorized representative during the

9 interim period, did you have any understanding as to

10 whether Mr. Patrick had the authority to bind any of

11 the DAF entities or CLO HoldCo during that time?

12 MR. KANE: Objection.

13 MR. BRIDGES: Objection. Calls for

14 legal conclusion. Also, objection as to

15 vagueness of the question.

16 BY MR. MORRIS:

17 Q. I'm sorry, Mr. Scott, did you answer?

18 A. I did not. No, I have not. I --

19 Q. I apologize.

20 A. I don't know what the status of his legal

21 authorization was.

22 Q. Do you recall that in early March, you

23 bought a couple of events to Mr. Patrick's attention?

24 A. I know that I forwarded documents to his

25 attention, yes.

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1 Grant Scott

2 testimony was I didn't see the agreements,

3 so I don't know.

4 BY MR. MORRIS:

5 Q. You haven't seen any agreement with

6 Highgate; is that right?

7 A. I don't recall that I have.

8 Q. Do you have any understanding as to whether

9 Highgate had the authority to bind any of the DAF

10 entities or CLO HoldCo during the interim period?

11 MR. BRIDGES: Objection. Calls for a

12 legal conclusion.

13 THE WITNESS: I don't know.

14 BY MR. MORRIS:

15 Q. Do you have any understanding as to whether

16 Mark Patrick had the ability as an individual to bind

17 any of the DAF entities or CLO HoldCo during the

18 interim period?

19 MR. BRIDGES: Objection. Calls for a

20 legal conclusion.

21 MR. KANE: Objection. Calls for a

22 legal conclusion.

23 THE WITNESS: I don't know.

24 BY MR. MORRIS:

25 Q. Okay. And I'm just asking as a matter of

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1 Grant Scott

2 Q. And why did you forward documents to

3 Mr. Patrick's attention during the interim period?

4 A. Because I was resigning, and I understood

5 that he was essentially going to be, or was the

6 director elect, and I just thought it appropriate to

7 bring such things to his attention.

8 Q. And when did you -- when did you learn that

9 he was doing to be the director elect?

10 A. I -- I believe it was February. Sometime

11 in February.

12 Q. Do you recall how you learned that he was

13 going to become the director elect?

14 A. I can't point to a specific conversation.

15 I can't -- I can't point to the specific conversation.

16 At some point, it went from being some future third

17 party, and I came to believe it would be him. I'm

18 not -- I'm not sure of the timing.

19 Q. Okay. Do you know from whom you learned

20 that he was going to be the director elect?

21 A. I believe it was him.

22 Q. Okay. So he told you that he was going to

23 replace you; is that right?

24 A. I don't know that he said it specifically.

25 I don't remember our conversations.

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1 Grant Scott

2 Q. Did you ever do anything to confirm with

3 anybody that Mark Patrick was going to be the director

4 elect, or did you just take his word for it?

5 A. I did not independently confirm it, no.

6 Q. Did you ever ask Mr. Dondero if -- if he

7 approved of the selection of Mr. Patrick as your

8 successor?

9 A. I did not.

10 Q. Did you ever discuss with Mr. Dondero, the

11 topic of who would be your successor?

12 A. Going back. Prior to the interim period, I

13 had recommended him, Mark.

14 Q. Did you -- did you discuss Mr. Patrick's

15 selection as your successor with anybody in the world

16 at any time other than Mr. Patrick?

17 A. I talked with my attorney about it. But I

18 don't think so. No.

19 Q. Did you talk with anybody that you believed

20 was authorized to make the decision on behalf of the

21 DAF entities and CLO HoldCo about your successor?

22 A. No, I did not.

23 MR. MORRIS: Can we put up the

24 document that was marked, La Asia, on Page

25 7, as Bates number 80.

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2 (Deposition Exhibit 10 was marked for

3 identification.)

4 BY MR. MORRIS:

5 Q. Do you see that -- if you scroll just down

6 a little bit. I guess not.

7 Mr. Patrick wrote an e-mail to you and

8 said, "The successor will respond to this complaint,"

9 and at the top you wrote "understood" --

10 A. Yes.

11 Q. -- or the top of the e-mail.

12 Do you recall that in early March, you

13 received a new complaint in which CLO HoldCo was named

14 the defendant?

15 A. I believe this -- this was the unsecured

16 creditors' committee complaint; is that correct?

17 Q. I think so, but it's your testimony. I'm

18 just asking you if you recall that in early March,

19 CLO HoldCo was sued?

20 A. Yes. I think this was the second lawsuit

21 that I was referring to personally.

22 Q. Okay. And so this -- this actually

23 occurred after the time you had already given notice,

24 right?

25 A. Yes.

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1 Grant Scott

2 Q. Yeah. And was the first lawsuit, the one

3 that you settled, before you gave notice?

4 A. No. The -- no, both lawsuits are pending.

5 Q. Okay. Do you know when the -- who's the

6 plaintiff in the first one?

7 A. Acis.

8 (Reporter clarification.)

9 THE WITNESS: Acis, A-C-I-S.

10 BY MR. MORRIS:

11 Q. So the debtor never sued you personally;

12 that right?

13 A. Not yet.

14 Q. And is it right that Mr. Patrick told you

15 that -- that the successor will respond to the

16 complaint?

17 A. Yes.

18 Q. Now, he's not referring to himself yet, is

19 he?

20 A. That appears correct, yes.

21 Q. Does that refresh your recollection that

22 you had not known yet as of March 2nd who the

23 successor would be?

24 A. I guess it does.

25 MR. MORRIS: Can we put up the next

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1 Grant Scott

2 exhibit, please, the one ending in -- the

3 one Bates number 85. And please remind us,

4 La Asia, what exhibit number are we up to?

5 MS. CANTY: We're up to 10, but the

6 one I'm about to put up is Exhibit 6 from

7 earlier today.

8 MR. MORRIS: Thank you very much.

9 BY MR. MORRIS:

10 Q. Now, if we can just scroll down a little

11 bit. Do you remember something called an Adherence

12 Agreement being discussed in March of 2021?

13 A. A what agreement?

14 Q. Adherence Agreement.

15 A. I see that. Was it directed to me?

16 Q. Yeah. If we can just scroll up.

17 Okay. So right there, do you see that

18 Thomas Surgent sends it to Mr. Kane? The subject is

19 'Adherence Agreement.'

20 A. Yes.

21 Q. And you do see that you forwarded that

22 e-mail to Mr. Patrick on the same day, March 2nd?

23 A. Yes.

24 Q. And it says "This relates to the second

25 issue from the debtor."

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1 Grant Scott

2 MR. BRIDGES: Objection.

3 MR. MORRIS: Withdrawn. Withdrawn.

4 BY MR. MORRIS:

5 Q. You didn't provide a substantive response

6 to Elysium; is that right?

7 MR. KANE: Objection. Assumes facts

8 not in evidence.

9 MR. MORRIS: That is why I'm asking

10 the question.

11 BY MR. MORRIS:

12 Q. Go ahead, Mr. Scott. You can answer.

13 A. I did not provide a substantive response to

14 their inquiry.

15 Q. Okay. Thank you.

16 Can we go to the top. In fact -- in fact,

17 you were instructed by Mr. Patrick to do nothing,

18 correct?

19 MR. BRIDGES: Objection. Misstates

20 the testimony.

21 THE WITNESS: No.

22 BY MR. MORRIS:

23 Q. Sir, the e-mail says "Do nothing," correct?

24 A. That is correct, and they were handling it,

25 not me.

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1 Grant Scott

2 Q. Did you sign this document?

3 A. Yes, sir.

4 Q. Okay. Do you know what this document is?

5 A. I believe it's the Management Share

6 Transfer Agreement.

7 Q. Okay. And do you know who prepared it?

8 A. I do not.

9 Q. Did you assign something pursuant to this

10 document?

11 A. Yes. The -- the -- the management shares.

12 MR. MORRIS: Okay. Can we go to the

13 first page, please?

14 BY MR. MORRIS:

15 Q. And do you see in paragraph 1, there is a

16 description of the assignment and assumption of the

17 signed interest?

18 A. Yes, I see that.

19 Q. Okay. Does that paragraph describe

20 everything that you assigned to Mr. Patrick?

21 A. In this agreement. Yes.

22 MR. BRIDGES: Objection. Calls --

23 objection. Calls for a legal conclusion.

24 MR. KANE: I join the objection.

25 BY MR. MORRIS:

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1 Grant Scott

2 Q. Okay. Now, did you resign on or about

3 March 24th, 2021?

4 A. Yes. That's -- that's when the transfer --

5 share of transfer.

6 Q. Okay.

7 MR. MORRIS: Can we put the next

8 exhibit up, please. It's the one at the

9 top at page 10. It's file 3, document 5.

10 MR. BRIDGES: Mr. Morris, can I ask

11 you how it is for time because you told us

12 earlier -- you teased us with a 4:15 end

13 time, potentially.

14 MR. MORRIS: Yeah, I'm just on the

15 last couple of documents.

16 MR. BRIDGES: Thank you.

17 MR. MORRIS: You bet.

18 BY MR. MORRIS:

19 Q. Do you see this is a document called an

20 Assignment and Assumption of Membership Interest

21 Agreement?

22 A. Yes.

23 MR. MORRIS: And if we can scroll

24 down.

25 BY MR. MORRIS:

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1 Grant Scott

2 Q. You can answer, sir.

3 A. Yes. I mean, it says what it says. But

4 yes, that is what I was transferring.

5 Q. And can you identify for me anything that

6 you know that you ever assigned to Mr. Patrick that is

7 not set forth in paragraph 1?

8 MR. BRIDGES: Objection. Form.

9 THE WITNESS: I'm unaware of

10 anything.

11 BY MR. MORRIS:

12 Q. Do you know if -- if the items and assets

13 that are set forth in paragraph 1 had any value?

14 MR. KANE: Objection. Form.

15 THE WITNESS: They had value, maybe

16 not monetary.

17 BY MR. MORRIS:

18 Q. And what value did they have?

19 A. I believe they had the property interest

20 that I referred to previously.

21 Q. And what property interest are you

22 referring to?

23 MR. KANE: Objection. Form. Calls

24 for a legal conclusion.

25 BY MR. MORRIS:

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1 Grant Scott

2 Q. You can answer. Sir, it's your words we

3 need.

4 A. The shares were the -- these management

5 shares were the -- I was treating as property.

6 Q. Do you have any understanding as to what

7 the value of the management shares was at the time you

8 entered into this agreement?

9 A. I did not.

10 Q. Did you have any understanding as to

11 whether those management shares held any particular

12 rights at the time you entered into this agreement?

13 MR. KANE: Objection to form.

14 THE WITNESS: My understanding was

15 they had my rights previously. Ultimately.

16 BY MR. MORRIS:

17 Q. And what rights did you believe flowed from

18 the management shares?

19 A. The controlling rights that flowed down to

20 the various entities.

21 Q. Did you receive anything in return in

22 exchange for your assignment of these property

23 interests and the other assets set forth in paragraph

24 1?

25 A. It allowed me to finally resign. That is

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1 Grant Scott

2 legal conclusion.

3 MR. KANE: I join the objection.

4 THE WITNESS: I didn't make -- I did

5 not make an assessment of that.

6 BY MR. MORRIS:

7 Q. Do you know -- withdrawn.

8 Do you have any understanding as to whether

9 there were any restrictions on the transferability of

10 the interests that you assigned pursuant to this

11 agreement?

12 MR. KANE: Objection. Calls for a

13 legal conclusion.

14 THE WITNESS: I did not.

15 BY MR. MORRIS:

16 Q. Did you let anybody know that you were

17 willing to assign the interests that are described in

18 paragraph 1 other than Mr. Patrick?

19 A. Anyone that I -- conceivably, anyone that I

20 let know that was at all familiar with the structure,

21 anyone that was informed of my desire to resign would

22 have arguably have known that.

23 Q. Okay. I'm not asking you to put yourself

24 in the shoes of anybody else. I'm asking for what you

25 recall telling people.

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1 Grant Scott

2 what I received. I mean, it ended my -- it ended my

3 role as a -- maybe as an agent, or an employee or

4 whatever. Those are my substantive rights, as I

5 understood it.

6 Q. Okay. So you -- you surrendered the

7 substantive rights in an exchange -- you no longer had

8 your substantive rights?

9 MR. BRIDGES: Objection. Asked and

10 answered.

11 MR. KANE: Objection. Form.

12 BY MR. MORRIS:

13 Q. You can answer, sir. Did you get anything

14 other than -- withdrawn.

15 Did you get anything other than what you

16 already described?

17 A. Relief. Yes.

18 Q. Excellent. Did you ever consider assigning

19 these interests or assets to anybody other than

20 Mr. Patrick?

21 A. I did not.

22 Q. Did you ever consider -- did you have any

23 belief as to whether the interests that were assigned

24 were freely tradeable?

25 MR. BRIDGES: Objection. Calls for a

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1 Grant Scott

2 Did you ever tell anybody at any time that

3 you were ready, willing and able to transfer and

4 assign the interests that are in this document other

5 than Mr. Patrick and your lawyers?

6 A. I am sorry. I misunderstood your question.

7 The answer is no.

8 Q. Did you ever think to try to assign these

9 interests for a profit?

10 A. Good grief, no.

11 (Reporter clarification.)

12 A. No.

13 Q. Did you -- was anybody, other than

14 Mr. Patrick, ever identified as a potential assignee

15 of the interests that are described in paragraph 1?

16 MR. KANE: Objection to form.

17 THE WITNESS: I was unaware of any.

18 BY MR. MORRIS:

19 Q. Okay. Did you make any effort to identify

20 anybody other than Mr. Patrick as a potential assignee

21 for the interests that are set forth in paragraph 1?

22 A. No, I did not.

23 Q. Did any -- did anybody acting on your

24 behalf, to the best of your knowledge, ever make any

25 efforts to identify any potential assignee other than

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1 Grant Scott

2 Mr. Patrick for the interests set forth in paragraph

3 1?

4 MR. BRIDGES: Objection. Foundation.

5 THE WITNESS: I don't have that

6 knowledge. No.

7 MR. MORRIS: Can we go to the next

8 exhibit, please?

9 (Deposition Exhibit 14 was marked for

10 identification.)

11 BY MR. MORRIS:

12 Q. Okay. And do you see that these are

13 written resolutions dated the next day, March 25th?

14 A. Yes.

15 Q. And these resolutions provide for the

16 shared transfer described in the document?

17 A. It appears so, yes.

18 Q. And are these the management shares that

19 you were referring to earlier?

20 A. I believe so.

21 Q. Did you believe at the time that you owned

22 all of the management shares of charitable DAF HoldCo

23 Limited?

24 A. That was my understanding.

25 Q. How did you acquire those shares?

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1 Grant Scott

2 Q. Were you paid anything of value for your

3 services as the, either the managing member of the DAF

4 GP, or as a director of any of the other DAF or

5 CLO HoldCo Limited entities at any time?

6 A. For a majority of the years, yes, I

7 received a monthly statement.

8 Q. And is that -- how much was the monthly

9 statement?

10 A. I believe it was \$5,000.

11 Q. Did it ever increase to an amount more than

12 \$5,000?

13 A. No.

14 Q. Did you receive anything else of value for

15 your service to the DAF entities and CLO HoldCo

16 Limited other than the \$5,000 monthly stipend that you

17 just described?

18 A. I did not.

19 Q. Do you recall that after you resigned, you

20 got reappointed, and then subsequently replaced again

21 by Mr. Patrick?

22 MR. KANE: Objection to form.

23 (Reporter clarification.)

24 THE WITNESS: Can you repeat -- did

25 you say -- it went away, and then it came

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1 Grant Scott

2 A. I'm not sure the exact timing, but I

3 believe that was all established when I became

4 involved.

5 Q. Did you pay anything of value for the

6 shares at the time that you acquired them?

7 A. I am -- I don't believe so, no.

8 Q. Did you need to obtain anybody's approval

9 before you could transfer the shares?

10 A. No. I don't believe so.

11 Q. Did you make any effort to obtain anybody's

12 approval before you transferred the shares?

13 A. I did not.

14 Q. Did you have any reason to believe that

15 Mr. Dondero approved of the transfer of the management

16 shares to Mr. Patrick?

17 A. I -- I don't know that.

18 Q. Did you testify earlier, that you had

19 discussed with Mr. Dondero in January, Mark Patrick

20 succeeding you?

21 MR. BRIDGES: Objection. Misstates

22 prior testimony.

23 BY MR. MORRIS:

24 Q. You can answer, sir.

25 A. I believe it was prior to that.

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1 Grant Scott

2 back. I don't understand the question. I

3 am sorry.

4 BY MR. MORRIS:

5 Q. That is okay. I just saw this in the

6 documents, and I thought it was odd. But let me put

7 the documents up and see if you can shed any light.

8 MR. MORRIS: Let's start with the

9 next exhibit, Patrick File 3, Document 9.

10 (Deposition Exhibit 15 was marked for

11 identification.)

12 BY MR. MORRIS:

13 Q. And do you see in the resolutions, if we

14 can go up just a bit, dated March 24th, and it was

15 resolved that you were removed as a director of the

16 company and Mr. Patrick was appointed as your

17 replacement, if that is a fair characterization?

18 Do you see that?

19 A. I see that.

20 MR. MORRIS: And now if we can put up

21 the next document.

22 (Deposition Exhibit 16 was marked for

23 identification.)

24 BY MR. MOR

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2 MR. MORRIS: And if we can just

3 scroll down and see if it's signed.

4 BY MR. MORRIS:

5 Q. Do you see that Mr. Patrick was removed as

6 the director and you were reappointed?

7 A. Yes, I do see that.

8 Q. Do you have any understanding as to why

9 Mr. Patrick resigned and reappointed you as the

10 director a week later?

11 A. I don't have -- I don't -- I don't know.

12 Q. Did you even know this happened?

13 A. Is my signature on that agreement?

14 Q. No.

15 A. I'm not sure.

16 Q. Do you have any -- do you have any

17 recollection as -- as to whether or not you were ever

18 reappointed as the director of the company on or about

19 March 31st, 2021?

20 A. I don't know if I have received any

21 communication about this or not.

22 Q. Okay.

23 MR. MORRIS: Can we go to the next

24 document, please?

25 (Deposition Exhibit 17 was marked for

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1 Grant Scott

2 Q. Did anybody ever describe for you or

3 explain to you what error had been made?

4 A. I am sorry. I'm not familiar with these

5 documents.

6 Q. Okay. Is it fair to say that -- well, I

7 will just leave it at that.

8 So nobody ever informed you that there was

9 a mistake that had to be corrected; is that right?

10 MR. BRIDGES: Objection. Asked and

11 answered.

12 BY MR. MORRIS:

13 Q. You can answer.

14 A. I don't know that there was this -- this

15 may have -- I don't know that there was a mistake.

16 Q. You have no knowledge of --

17 A. I have no knowledge of this. I was in a

18 very complex process. I think there...

19 Q. And nobody ever asked -- nobody ever asked

20 your consent to be reappointed as the director of the

21 company, correct?

22 MR. BRIDGES: Objection. Asked and

23 answered.

24 THE WITNESS: I didn't receive any

25 communications about this.

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2 identification.)

3 MR. KANE: Mr. Morris, can you help

4 me with the exhibit numbers? Was that 16,

5 or are we still on 15, additional portions

6 of it?

7 MS. CANTY: That was 16 but not going

8 to 17.

9 MR. KANE: Thank you. I apologize.

10 MR. MORRIS: That is okay, Jonathan.

11 We will get to everything and clear up any

12 confusion.

13 BY MR. MORRIS:

14 Q. So if you go to the bottom of that

15 document, can you see that it was signed?

16 All right. Do you see Mr. Patrick signed

17 this document?

18 A. Yes, I see that.

19 Q. Do you see that it's dated -- if we can go

20 back up to the top. It's April 2nd, and do you see

21 that you are -- pursuant to these resolutions, you

22 were removed as the director again and replaced by

23 Mr. Patrick?

24 A. Yes, I see that. And they seem to be

25 correcting an error of some sort.

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1 Grant Scott

2 BY MR. MORRIS:

3 Q. And so you didn't provide your consent to

4 be reappointed as the director of the company,

5 correct?

6 MR. BRIDGES: Objection. Asked and

7 answered.

8 THE WITNESS: That's correct.

9 BY MR. MORRIS:

10 Q. Okay. Did you become aware that after you

11 resigned, that DAF and CLO HoldCo started a lawsuit

12 against the debtor and some other defendants related

13 to the HarbourVest settlement?

14 A. I did become aware of it, yes.

15 Q. And were you aware of the lawsuit -- were

16 you aware that DAF and CLO HoldCo were considering

17 filing the lawsuit before it was actually commenced?

18 A. No.

19 Q. Did you have any communications with

20 anybody at any time about the possibility that the DAF

21 and CLO HoldCo would commence a lawsuit against the

22 debtor and others relating to the HarbourVest

23 settlement prior to the time that the lawsuit was

24 commenced?

25 A. I did not.

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1 Grant Scott

2 Q. So is it fair to say that you did not

3 provide any information to anybody at any time to

4 support the claim -- the complaint that was filed

5 against the debtor and the other defendants in the

6 lawsuit that was brought by the DAF and CLO HoldCo?

7 MR. BRIDGES: Objection. Foundation.

8 THE WITNESS: I didn't provide

9 anything with respect to the litigation

10 that was filed.

11 BY MR. MORRIS:

12 Q. And did anybody ever ask you for

13 information relating to potential claims against the

14 debtor and others?

15 A. No.

16 Q. Did you ever have any discussions with

17 anybody at any time as to whether Jim Seery should be

18 named as a defendant in the lawsuit that was brought by

19 the DAF and CLO HoldCo against the debtor and others?

20 A. No.

21 MR. MORRIS: I have no further

22 questions. Thank you, Mr. Scott.

23 MR. BRIDGES: I don't have any

24 questions.

25 MR. KANE: Can I -- I've got a couple

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1 Grant Scott

2 Q. And did you read that transcript?

3 A. I believe we discussed it. I'm not -- I'm

4 not sure.

5 Q. Did you have a recollection that Judge

6 Jernigan made a comment or comments about you and

7 Jim Dondero during her ruling?

8 A. Yes.

9 Q. Do you believe that Judge Jernigan's

10 comments were inaccurate?

11 MR. MORRIS: Objection to the form of

12 the question. No foundation. Leading.

13 BY MR. KANE:

14 Q. I will rephrase. I will rephrase.

15 I will ask it -- a different question.

16 Mr. Scott, do you believe that you acted

17 independently during the bankruptcy case?

18 A. Yes.

19 Q. Do you believe you acted in the best

20 interests of CLO HoldCo?

21 A. Yes, I do.

22 MR. KANE: I'm done.

23 MR. MORRIS: Just some follow-up

24 questions, Mr. Scott.

25

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1 Grant Scott

2 just follow-up for clarification purposes.

3 EXAMINATION

4 BY MR. KANE:

5 Q. Grant, earlier you were testifying about

6 resigning and noted -- I believe your testimony was

7 one of the reasons was an issue of independence. Can

8 you clarify what you meant by issue of independence?

9 A. I came to believe that there was a

10 perception, and my friendship with Jim Dondero

11 precluded my -- my independence.

12 Q. Perception by whom?

13 A. The judge in the case.

14 (Reporter clarification.)

15 A. The judge in the bankruptcy case.

16 Q. Was there a specific reason or instance

17 that caused you to have that belief?

18 A. Yes. When I spoke with you about the --

19 Q. Well, I don't want to go into any

20 attorney-client communications.

21 A. I am sorry.

22 Q. So let me ask you a different question.

23 Were you provided a transcript of the Court's ruling

24 on the escrow hearing for the registry dispute?

25 A. I believe so.

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1 Grant Scott

2 EXAMINATION

3 BY MR. MORRIS:

4 Q. Did you ever testify before Judge Jernigan?

5 A. I have not.

6 Q. So is it fair to say that you had no reason

7 to believe that she could ever access your credibility

8 as a witness?

9 MR. BRIDGES: I'm going to object.

10 That calls for a legal conclusion.

11 BY MR. MORRIS:

12 Q. You can answer.

13 A. From -- from what I understand from the

14 transcript of that hearing, a number of comments were

15 made by the judge regarding my independence, that sort

16 of thing, that made me -- that made me think that

17 maybe I could just remove that as an issue in the case

18 by resigning. That is essentially, what my conclusion

19 was from that hearing.

20 Q. But you didn't resign at the time that the

21 judge made those statements, did you?

22 MR. BRIDGES: Objection.

23 Argumentative.

24 BY MR. MORRIS:

25 Q. You can answer.

1

Grant Scott

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2

Q. Which settlement are you referring to?

3

A. The -- the TRO settlement.

4

Q. And were you on the -- did you listen in to

5

the hearing during that hearing when -- when the judge

6

approved the settlement?

7

A. I did not.

8

Q. Did you read the transcript?

9

A. I did not.

10

Q. Did anybody ever tell you that the judge

11

said anything during that hearing to question your

12

independence?

13

MR. KANE: Objection to the extent it

14

calls for attorney/client privileged

15

information.

16

THE WITNESS: No. No, I think you

17

misunderstand. I had one data point to go

18

on, and that's what made me start the

19

process of thinking of resigning. That's

20

all.

21

BY MR. MORRIS:

22

Q. I appreciate that.

23

A. The issue -- the issue has been raised

24

repeatedly, whether it was my idea or somebody else's

25

idea, that's all I'm saying. If you can, it was my

1

Grant Scott

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2

idea.

3

Q. Okay. And I'm asking you if you have any

4

other data points after that hearing to support the

5

notion that Judge Jernigan questioned your

6

independence?

7

A. No.

8

MR. MORRIS: I have no further

9

questions.

10

MR. BRIDGES: Me either.

11

MR. KANE: I'm done. Thank you.

12

Mr. Scott.

13

(Deposition adjourned at 4:42 p.m.)

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Grant Scott

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2

REPORTER'S CERTIFICATE

3

I, LESHAUNDA CASS-BYRD, CSR No. B-2291, RPR,

4

Registered Professional Reporter, certify that the

5

foregoing proceedings were taken before me at the time

6

and place therein set forth, at which time the witness

7

was put under oath by me;

8

That the testimony of the witness, the questions

9

propounded, and all objections and statements made at

10

the time of the examination were recorded

11

stenographically by me and were thereafter

12

transcribed;

13

That the foregoing is a true and correct

14

transcript of my shorthand notes to taken.

15

I further certify that I am not a relative or employee

16

of any attorney or the parties, nor financially

17

interested in the action.

18

I declare under penalty of perjury under the laws

19

of North Carolina that the foregoing is true and

20

correct.

21

Dated this June 1, 2021.

22

23

Leshanda Byrd

24

LESHAUNDA CASS-BYRD, CCR-B-2291, RPR

25

1

ERRATA SHEET

Page 113

2

Case Name:

3

Deposition Date:

4

Deponent:

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Pg. No. Now Reads Should Read Reason

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SUBSCRIBED AND SWORN BEFORE ME

23

THIS ____ DAY OF _____, 2021.

24

25

(Notary Public) MY COMMISSION EXPIRES: _____

EXHIBIT 4



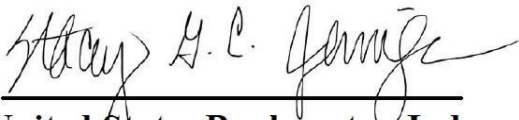
CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed February 22, 2021


United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.,¹

Debtor.

) Chapter 11

) Case No. 19-34054-sgj11

**ORDER (I) CONFIRMING THE FIFTH AMENDED
PLAN OF REORGANIZATION OF HIGHLAND CAPITAL
MANAGEMENT, L.P. (AS MODIFIED) AND (II) GRANTING RELATED RELIEF**

The Bankruptcy Court² having:

- a. entered, on November 24, 2020, the *Order (A) Approving the Adequacy of the Disclosure Statement, (B) Scheduling A Hearing to Confirm the Fifth Amended Plan of Reorganization (C) Establishing Deadline for Filing Objections to Confirmation of Plan, (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures, and (E) Approving Form and Manner of Notice* [Docket No. 1476] (the “Disclosure Statement Order”), pursuant to which the Bankruptcy Court approved the adequacy of the *Disclosure Statement Relating to the Fifth*

¹ The Debtor’s last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

² Capitalized terms used but not otherwise defined herein have the meanings given to them in the Plan (as defined below). The rules of interpretation set forth in Article I of the Plan apply to this Confirmation Order.



g. reviewed: (i) the *Notice of (I) Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, if Any, and (III) Related Procedures in Connection Therewith* filed on December 30, 2020 [Docket No. 1648]; (ii) the *Second Notice of (I) Executory Contracts and*

Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, if Any, and (III) Related Procedures in Connection Therewith filed on January 11, 2021 [Docket No.1719]; (iii) the *Third Notice of (I) Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, if Any, and (III) Related Procedures in Connection Therewith* filed on January 15, 2021 [Docket No. 1749]; (iv) the *Notice of Withdrawal of Certain Executory Contracts and Unexpired Leases from List of Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan* [Docket No. 1791]; (v) the *Fourth Notice of (I) Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan (II) Cure Amounts, if Any, and (III) Released Procedures in Connection Therewith* filed on January 27, 2021 [Docket No. 1847]; (vi) the *Notice of Hearing on Agreed Motion to (I) Assume Nonresidential Real Property Lease with Crescent TC Investors, L.P. Upon Confirmation of Plan and (II) Extend Assumption Deadline* filed on January 28, 2021 [Docket No. 1857]; and (vii) the *Fifth Notice of (I) Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan (II) Cure Amounts, if Any, and (III) Released Procedures in Connection Therewith* filed on February 1, 2021 [Docket No. 1873] (collectively, the documents referred to in (i) to (vii) are referred to as “List of Assumed Contracts”);

- h. reviewed: (i) the *Debtor’s Memorandum of Law in Support of Confirmation of the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1814] (the “Confirmation Brief”); (ii) the *Debtor’s Omnibus Reply to Objections to Confirmation of the Fifth Amended Chapter 11 Plan of Reorganization of Highland Capital Management*; [Docket No. 1807]; and (iii) the *Certification of Patrick M. Leathem With Respect to the Tabulation of Votes on the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1772] and *Supplemental Certification of Patrick M. Leathem With Respect to the Tabulation of Votes on the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1887] filed on February 3, 2021 (together, the “Voting Certifications”).
- i. reviewed: (i) the *Notice of Affidavit of Publication* dated December 3, 2020 [Docket No. 1505]; (ii) the *Certificate of Service* dated December 23, 2020 [Docket No. 1630]; (iii) the *Supplemental Certificate of Service* dated December 24, 2020 [Docket No. 1637]; (iv) the *Second Supplemental Certificate of Service* dated December 31, 2020 [Docket No. 1653]; (v) the *Certificate of Service* dated December 23, 2020 [Docket No. 1627]; (vi) the *Certificate of Service* dated January 6, 2021 [Docket No. 1696]; (vii) the *Certificate of Service* dated January 7, 2021 [Docket No. 1699]; (viii) the *Certificate of Service* dated January 7, 2021 [Docket No 1700]; (ix) the *Certificate of Service* dated January 15, 2021 [Docket No. 1761]; (x) the *Certificate of Service* dated January 19, 2021 [Docket No. 1775]; (xi) the

Certificate of Service dated January 20, 2021 [Docket No. 1787]; (xii) the *Certificate of Service* dated January 26, 2021 [Docket No. 1844]; (xiii) the *Certificate of Service* dated January 27, 2021 [Docket No. 1854]; (xiv) the *Certificate of Service* dated February 1, 2021 [Docket No. 1879]; (xv) the *Certificates of Service* dated February 3, 2021 [Docket No. 1891 and 1893]; and (xvi) the *Certificates of Service* dated February 5, 2021 [Docket Nos. 1906, 1907, 1908 and 1909] (collectively, the “Affidavits of Service and Publication”);

- j. reviewed all filed³ pleadings, exhibits, statements, and comments regarding approval of the Disclosure Statement and confirmation of the Plan, including all objections, statements, and reservations of rights;
- k. conducted a hearing to consider confirmation of the Plan, which commenced on February 2, 2021, at 9:30 a.m. prevailing Central Time and concluded on February 3, 2021, and issued its oral ruling on February 8, 2021 (collectively, the “Confirmation Hearing”);
- l. heard the statements and arguments made by counsel in respect of confirmation of the Plan and having considered the record of this Chapter 11 Case and taken judicial notice of all papers and pleadings filed in this Chapter 11 Case; and
- m. considered all oral representations, testimony, documents, filings, and other evidence regarding confirmation of the Plan, including (a) all of the exhibits admitted into evidence;⁴ (b) the sworn testimony of (i) James P. Seery, Jr., the Debtor’s Chief Executive Officer and Chief Restructuring Officer and a member of the Board of Directors of Strand Advisors, Inc. (“Strand”), the Debtor’s general partner; (ii) John S. Dubel, a member of the Board of Strand; (iii) Marc Tauber, a Vice President at Aon Financial Services; and (iv) Robert Jason Post, the Chief Compliance Officer of NexPoint Advisors, LP (collectively, the “Witnesses”); (c) the credibility of the Witnesses; and (d) the Voting Certifications.

NOW, THEREFORE, after due deliberation thereon and good cause appearing therefor, the Bankruptcy Court hereby makes and issues the following findings of fact and conclusions of law:

³ Unless otherwise indicated, use of the term “filed” herein refers also to the service of the applicable document filed on the docket in this Chapter 11 Case, as applicable.

⁴ The Court admitted the following exhibits into evidence: (a) all of the Debtor’s exhibits lodged at Docket No. 1822 (except TTTTT, which was withdrawn by the Debtor); (b) all of the Debtor’s exhibits lodged at Docket No. 1866; (c) all of the Debtor’s exhibits lodged at Docket No. 1877; (d) all of the Debtor’s exhibits lodged at Docket No. 1895; and (e) Exhibits 6-12 and 15-17 offered by Mr. James Dondero and lodged at Docket No. 1874.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. **Findings of Fact and Conclusions of Law.** The findings and conclusions set forth herein, together with the findings of fact and conclusions of law set forth in the record during the Confirmation Hearing, constitute the Bankruptcy Court's findings of fact and conclusions of law pursuant to **Federal Rule of Civil Procedure 52**, made applicable to this proceeding pursuant to Bankruptcy Rules 7052 and 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent that any of the following conclusions of law constitute findings of fact, they are adopted as such.

2. **Introduction and Summary of the Plan.** Prior to addressing the specific requirements under the Bankruptcy Code and Bankruptcy Rules with respect to the confirmation of the Plan, the Bankruptcy Court believes it would be useful to first provide the following background of the Debtor's Chapter 11 Case, the parties involved therewith, and some of the major events that have transpired culminating in the filing and solicitation of the Plan of this very unusual case. Before the Bankruptcy Court is the *Debtor's Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.*, filed on November 24, 2020, as modified on January 22, 2021 and again on February 1, 2021. The parties have repeatedly referred to the Plan as an "asset monetization plan" because it involves the orderly wind-down of the Debtor's estate, including the sale of assets and certain of its funds over time, with the Reorganized Debtor continuing to manage certain other funds, subject to the oversight of the Claimant Trust Oversight Board. The Plan provides for a Claimant Trust to, among other things, manage and monetize the Claimant Trust Assets for the benefit of the Debtor's economic stakeholders. The Claimant Trustee is responsible

for this process, among other duties specified in the Plan’s Claimant Trust Agreement. There is also anticipated to be a Litigation Sub-trust established for the purpose of pursuing certain avoidance or other causes of action for the benefit of the Debtor’s economic constituents.

3. **Confirmation Requirements Satisfied.** The Plan is supported by the Committee and all claimants with Convenience Claims (*i.e.*, general unsecured claims under \$1 million) who voted in Class 7. Claimants with Class 8 General Unsecured Claims, however, voted to reject the Plan because, although the Plan was accepted by 99.8% of the amount of Claims in that class, only 17 claimants voted to accept the Plan while 27 claimants voted to reject the Plan. As a result of such votes, and because Mr. Dondero and the Dondero Related Entities (as defined below) objected to the Plan on a variety of grounds primarily relating to the Plan’s release, exculpation and injunction provisions, the Bankruptcy Court heard two full days of evidence on February 2 and 3, 2021, and considered testimony from five witnesses and thousands of pages of documentary evidence in determining whether the Plan satisfies the confirmation standards required under the Bankruptcy Code. The Bankruptcy Court finds and concludes that the Plan meets all of the relevant requirements of sections 1123, 1124, and 1129, and other applicable provisions of the Bankruptcy Code, as more fully set forth below with respect to each of the applicable confirmation requirements.

4. **Not Your Garden Variety Debtor.** The Debtor’s case is not a garden variety chapter 11 case. The Debtor is a multibillion-dollar global investment adviser registered with the SEC, pursuant to the Investment Advisers Act of 1940. It was founded in 1993 by James Dondero and Mark Okada. Mark Okada resigned from his role with Highland prior to the

bankruptcy case being filed on October 16, 2019 (the “Petition Date”). Mr. Dondero controlled the Debtor as of the Petition Date but agreed to relinquish control of it on or about January 9, 2020, pursuant to an agreement reached with the Committee, as described below. Although Mr. Dondero remained with the Debtor as an unpaid employee/portfolio manager after January 9, 2020, his employment with the Debtor terminated on October 9, 2020. Mr. Dondero continues to work for and/or control numerous non-debtor entities in the complex Highland enterprise.

5. **The Debtor.** The Debtor is headquartered in Dallas, Texas. As of the Petition Date, the Debtor employed approximately 76 employees. The Debtor is privately-owned: (a) 99.5% by the Hunter Mountain Investment Trust; (b) 0.1866% by The Dugaboy Investment Trust, a trust created to manage the assets of Mr. Dondero and his family; (c) 0.0627% by Mark Okada, personally and through family trusts; and (d) 0.25% by Strand, the Debtor’s general partner.

6. **The Highland Enterprise.** Pursuant to various contractual arrangements, the Debtor provides money management and advisory services for billions of dollars of assets, including collateralized loan obligation vehicles (“CLOs”), and other investments. Some of these assets are managed by the Debtor pursuant to shared services agreements with certain affiliated entities, including other affiliated registered investment advisors. In fact, there are approximately 2,000 entities in the byzantine complex of entities under the Highland umbrella. None of these affiliated entities filed for chapter 11 protection. Most, but not all, of these entities are not subsidiaries (direct or indirect) of the Debtor. Many of the Debtor’s affiliated companies are

The Debtor also did not suffer any type of catastrophic business calamity. In fact, the Debtor filed for Chapter 11 protection six months before the onset of the COVID-19 pandemic. Rather, the Debtor filed for Chapter 11 protection due to a myriad of massive, unrelated, business litigation claims that it faced—many of which had finally become liquidated (or were about to become liquidated) after a decade or more of contentious litigation in multiple forums all over the world. The Committee in this case has referred to the Debtor—under its former chief executive, Mr. Dondero—as a “serial litigator.” The Bankruptcy Court agrees with that description. By way of example, the members of the Committee (and their history of litigation with the Debtor and others in the Highland complex) are as follows:

continued on with numerous appeals of Bankruptcy Court orders, including one appeal still pending at the Fifth Circuit Court of Appeals. There was also litigation involving Mr. Terry and Acis in the Royal Court of the Island of Guernsey and in a state court in New York. The Acis claim was settled during this Chapter 11 Case, in Bankruptcy Court-ordered mediation, for approximately \$23 million (subject to other details not relevant for this purpose), and is the subject of an appeal being pursued by Mr. Dondero.

- c. **UBS Securities LLC and UBS AG London Branch (“UBS”).** UBS is a Committee member that filed a proof of claim in the amount of \$1,039,957,799.40 in this Chapter 11 Case. The UBS Claim was based on a judgment that UBS received from a New York state court in 2020. The underlying decision was issued in November 2019, after a multi-week bench trial (which had occurred many months earlier) on a breach of contract claim against non-Debtor entities in the Highland complex. The UBS litigation related to activities that occurred in 2008 and 2009. The litigation involving UBS and Highland and affiliates was pending for more than a decade (there having been numerous interlocutory appeals during its history). The Debtor and UBS recently announced an agreement in principle for a settlement of the UBS claim (which came a few months after Bankruptcy Court-ordered mediation) which will be subject to a 9019 motion to be filed with the Bankruptcy Court on a future date.
- d. **Meta-E Discovery (“Meta-E”).** Meta-E is a Committee member that is a vendor who happened to supply litigation and discovery-related services to the Debtor over the years. It had unpaid invoices on the Petition Date of more than \$779,000.

It is fair to say that the members of the Committee in this case all have wills of steel. They fought hard before and during this Chapter 11 Case. The members of the Committee, all of whom have volunteered to serve on the Claimant Trust Oversight Board post-confirmation, are highly sophisticated and have had highly sophisticated professionals representing them. They have represented their constituency in this case as fiduciaries extremely well.

9. **Other Key Creditor Constituents.** In addition to the Committee members who were all embroiled in years of litigation with Debtor and its affiliates in various ways, the Debtor has been in litigation with Patrick Daugherty, a former limited partner and employee of the Debtor, for many years in both Delaware and Texas state courts. Mr. Daugherty filed an amended

proof of claim in this Chapter 11 Case for \$40,710,819.42 relating to alleged breaches of employment-related agreements and for defamation arising from a 2017 press release posted by the Debtor. The Debtor and Mr. Daugherty recently announced a settlement of Mr. Daugherty's claim pursuant to which he will receive \$750,000 in cash on the Effective Date of the Plan, an \$8.25 million general unsecured claim, and a \$2.75 million subordinated claim (subject to other details not relevant for this purpose). Additionally, entities collectively known as "HarbourVest" invested more than \$70 million with an entity in the Highland complex and asserted a \$300 million proof of claim against the Debtor in this case, alleging, among other things, fraud and RICO violations. HarbourVest's claim was settled during the bankruptcy case for a \$45 million general unsecured claim and a \$35 million subordinated claim, and that settlement is also being appealed by a Dondero Entity.

10. **Other Claims Asserted.** Other than the Claims just described, most of the other Claims in this Chapter 11 Case are Claims asserted against the Debtor by: (a) entities in the Highland complex—most of which entities the Bankruptcy Court finds to be controlled by Mr. Dondero; (b) employees who contend that are entitled to large bonuses or other types of deferred compensation; and (c) numerous law firms that worked for the Debtor prior to the Petition Date and had outstanding amounts due for their prepetition services.

11. **Not Your Garden Variety Post-Petition Corporate Governance Structure.** Yet another reason this is not your garden variety chapter 11 case is its post-petition corporate governance structure. Immediately from its appointment, the Committee's relationship with the Debtor was contentious at best. First, the Committee moved for a change of venue from

Delaware to Dallas. Second, the Committee (and later, the United States Trustee) expressed its then-desire for the appointment of a chapter 11 trustee due to its concerns over and distrust of Mr. Dondero, his numerous conflicts of interest, and his history of alleged mismanagement (and perhaps worse).

12. **Post-Petition Corporate Governance Settlement with Committee.** After spending many weeks under the threat of the potential appointment of a trustee, the Debtor and Committee engaged in substantial and lengthy negotiations resulting in a corporate governance settlement approved by the Bankruptcy Court on January 9, 2020.⁵ As a result of this settlement, among other things, Mr. Dondero relinquished control of the Debtor and resigned his positions as an officer or director of the Debtor and its general partner, Strand. As noted above, Mr. Dondero agreed to this settlement pursuant a stipulation he executed,⁶ and he also agreed not to cause any Related Entity (as defined in the Settlement Motion) to terminate any agreements with the Debtor. The January 9 Order also (a) required that the Bankruptcy Court serve as “gatekeeper” prior to the commencement of any litigation against the three independent board members appointed to oversee and lead the Debtor’s restructuring in lieu of Mr. Dondero and (b) provided for the exculpation of those board members by limiting claims subject to the “gatekeeper” provision to those alleging willful misconduct and gross negligence.

⁵ This order is hereinafter referred to as the “January 9 Order” and was entered by the Court on January 9, 2020 [Docket No. 339] pursuant to the *Motion of the Debtor to Approve Settlement with Official Committee of Unsecured Creditors Regarding the Governance of the Debtor and Procedures for Operation in the Ordinary Course* [Docket No. 281] (the “Settlement Motion”).

⁶ See *Stipulation in Support of Motion of the Debtor for Approval of Settlement With the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in Ordinary Course* [Docket No. 338] (the “Stipulation”).

13. **Appointment of Independent Directors.** As part of the Bankruptcy Court-approved settlement, three eminently qualified independent directors were chosen to lead Highland through its Chapter 11 Case. They are: James P. Seery, Jr., John S. Dubel (each chosen by the Committee), and Retired Bankruptcy Judge Russell Nelms. These three individuals are each technically independent directors of Strand (Mr. Dondero had previously been the sole director of Strand and, thus, the sole person in ultimate control of the Debtor). The three independent board members' resumes are in evidence. The Bankruptcy Court later approved Mr. Seery's appointment as the Debtor's Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative. Suffice it to say that this settlement and the appointment of the independent directors changed the entire trajectory of the case and saved the Debtor from the appointment of a trustee. The Bankruptcy Court and the Committee each trusted the independent directors. They were the right solution at the right time. Because of the unique character of the Debtor's business, the Bankruptcy Court believed the appointment of three qualified independent directors was a far better outcome for creditors than the appointment of a conventional chapter 11 trustee. Each of the independent directors brought unique qualities to the table. Mr. Seery, in particular, knew and had vast experience at prominent firms with high-yield and distressed investing similar to the Debtor's business. Mr. Dubel had 40 years of experience restructuring large complex businesses and serving on boards in this context. And Retired Judge Nelms had not only vast bankruptcy experience but seemed particularly well-suited to help the Debtor maneuver through conflicts and ethical quandaries. By way of comparison, in the chapter 11 case of Acis, the former affiliate of Highland that the Bankruptcy Court presided over and which company was

much smaller in size and scope than Highland (managing only 5-6 CLOs), the creditors elected a chapter 11 trustee who was not on the normal trustee rotation panel in this district but, rather, was a nationally known bankruptcy attorney with more than 45 years of large chapter 11 experience. While the Acis chapter 11 trustee performed valiantly, he was sued by entities in the Highland complex shortly after he was appointed (which the Bankruptcy Court had to address). The Acis trustee was also unable to persuade the Debtor and its affiliates to agree to any actions taken in the case, and he finally obtained confirmation of Acis' chapter 11 plan over the objections of the Debtor and its affiliates on his fourth attempt (which confirmation was promptly appealed).

14. **Conditions Required by Independent Directors.** Given the experiences in Acis and the Debtor's culture of constant litigation, it was not as easy to get such highly qualified persons to serve as independent board members and, later, as the Debtor's Chief Executive Officer, as it would be in an ordinary chapter 11 case. The independent board members were stepping into a morass of problems. Naturally, they were worried about getting sued no matter how defensible their efforts—given the litigation culture that enveloped Highland historically. Based on the record of this Case and the proceedings in the Acis chapter 11 case, it seemed as though everything always ended in litigation at Highland. The Bankruptcy Court heard credible testimony that none of the independent directors would have taken on the role of independent director without (1) an adequate directors and officers' ("D&O") insurance policy protecting them; (2) indemnification from Strand that would be guaranteed by the Debtor; (3) exculpation for mere negligence claims; and (4) a gatekeeper provision prohibiting the commencement of litigation against the independent directors without the Bankruptcy Court's prior authority. This gatekeeper provision was also

included in the Bankruptcy Court’s order authorizing the appointment of Mr. Seery as the Debtor’s Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative entered on July 16, 2020.⁷ The gatekeeper provisions in both the January 9 Order and July 16 Order are precisely analogous to what bankruptcy trustees have pursuant to the so-called “Barton Doctrine” (first articulated in an old Supreme Court case captioned *Barton v. Barbour*, 104 U.S. 126 (1881)). The Bankruptcy Court approved all of these protections in the January 9 Order and the July 16 Order, and no one appealed either of those orders. As noted above, Mr. Dondero signed the Stipulation that led to the settlement that was approved by the January 9 Order. The Bankruptcy Court finds that, like the Committee, the independent board members have been resilient and unwavering in their efforts to get the enormous problems in this case solved. They seem to have at all times negotiated hard and in good faith, which culminated in the proposal of the Plan currently before the Bankruptcy Court. As noted previously, they completely changed the trajectory of this case.

15. **Not Your Garden Variety Mediators.** And still another reason why this was not your garden variety case was the mediation effort. In the summer of 2020, roughly nine months into the chapter 11 case, the Bankruptcy Court ordered mediation among the Debtor, Acis, UBS, the Redeemer Committee, and Mr. Dondero. The Bankruptcy Court selected co-mediators because mediation among these parties seemed like such a Herculean task—especially during COVID-19 where people could not all be in the same room. Those co-mediators were: Retired

⁷ See Order Approving the Debtor’s Motion Under Bankruptcy Code Sections 105(a) and 363(b) Authorizing Retention of James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative Nunc Pro Tunc to March 15, 2020 [Docket No. 854] entered on July 16, 2020 (the “July 16 Order”)

Bankruptcy Judge Alan Gropper from the Southern District of New York, who had a distinguished career presiding over complex chapter 11 cases, and Ms. Sylvia Mayer, who likewise has had a distinguished career, first as a partner at a preeminent law firm working on complex chapter 11 cases, and subsequently as a mediator and arbitrator in Houston, Texas. As noted earlier, the Redeemer Committee and Acis claims were settled during the mediation—which seemed nothing short of a miracle to the Bankruptcy Court—and the UBS claim was settled several months later and the Bankruptcy Court believes the ground work for that ultimate settlement was laid, or at least helped, through the mediation. And, as earlier noted, other significant claims have been settled during this case, including those of HarbourVest (who asserted a \$300 million claim) and Patrick Daugherty (who asserted a \$40 million claim). The Bankruptcy Court cannot stress strongly enough that the resolution of these enormous claims—and the acceptance by all of these creditors of the Plan that is now before the Bankruptcy Court—seems nothing short of a miracle. It was more than a year in the making.

16. **Not Your Garden Variety Plan Objectors (That Is, Those That Remain).** Finally, a word about the current, remaining objectors to the Plan before the Bankruptcy Court. Once again, the Bankruptcy Court will use the phrase “not your garden variety”, which phrase applies to this case for many reasons. Originally, there were over a dozen objections filed to the Plan. The Debtor then made certain amendments or modifications to the Plan to address some of these objections, none of which require further solicitation of the Plan for reasons set forth in more detail below. The only objectors to the Plan left at the time of the Confirmation Hearing

were Mr. Dondero [Docket No. 1661] and entities that the Bankruptcy Court finds are owned and/or controlled by him and that filed the following objections:

- a. *Objection to Confirmation of the Debtor's Fifth Amended Plan of Reorganization* (filed by Get Good Trust and The Dugaboy Investment Trust) [Docket No. 1667];
- b. *Objection to Confirmation of Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* (filed by Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrage Fund, Highland Opportunistic Credit Fund, Highland Small-Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund) [Docket No. 1670];
- c. *A Joinder to the Objection filed at 1670 by: NexPoint Real Estate Finance Inc., NexPoint Real Estate Capital, LLC, NexPoint Residential Trust, Inc., NexPoint Hospitality Trust, NexPoint Real Estate Partners, LLC, NexPoint Multifamily Capital Trust, Inc., VineBrook Homes Trust, Inc., NexPoint Real Estate Advisors, L.P., NexPoint Real Estate Advisors II, L.P., NexPoint Real Estate Advisors III, L.P., NexPoint Real Estate Advisors IV, L.P., NexPoint Real Estate Advisors V, L.P., NexPoint Real Estate Advisors VI, L.P., NexPoint Real Estate Advisors VII, L.P., NexPoint Real Estate Advisors VIII, L.P., and any funds advised by the foregoing* [Docket No. 1677];
- d. *NexPoint Real Estate Partners LLC's Objection to Debtor's Fifth Amended Plan of Reorganization* (filed by NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC) [Docket No. 1673]; and
- e. *NexBank's Objection to Debtor's Fifth Amended Plan of Reorganization* (filed by NexBank Title, Inc., NexBank Securities, Inc., NexBank Capital, Inc., and NexBank) [Docket No. 1676]. The entities referred to in (i) through (v) of this paragraph are hereinafter referred to as the "Dondero Related Entities").

17. **Questionability of Good Faith as to Outstanding Confirmation**

Objections. Mr. Dondero and the Dondero Related Entities technically have standing to object to the Plan, but the remoteness of their economic interests is noteworthy, and the Bankruptcy Court

questions the good faith of Mr. Dondero’s and the Dondero Related Entities’ objections. In fact, the Bankruptcy Court has good reason to believe that these parties are not objecting to protect economic interests they have in the Debtor but to be disruptors. Mr. Dondero wants his company back. This is understandable, but it is not a good faith basis to lob objections to the Plan. As detailed below, the Bankruptcy Court has slowed down plan confirmation multiple times and urged the parties to talk to Mr. Dondero in an attempt to arrive at what the parties have repeatedly referred to as a “grand bargain,” the ultimate goal to resolve the Debtor’s restructuring. The Debtor and the Committee represent that they have communicated with Mr. Dondero regarding a grand bargain settlement, and the Bankruptcy Court believes that they have.

18. **Remote Interest of Outstanding Confirmation Objectors.** To be specific about the remoteness of Mr. Dondero’s and the Dondero Related Entities’ interests, the Bankruptcy Court will address them each separately. First, Mr. Dondero has a pending objection to the Plan. Mr. Dondero’s only economic interest with regard to the Debtor is an unliquidated indemnification claim (and, based on everything the Bankruptcy Court has heard, his indemnification claims would be highly questionable at this juncture). Mr. Dondero owns no equity in the Debtor directly. Mr. Dondero owns the Debtor’s general partner, Strand, which in turn owns a quarter percent of the total equity in the Debtor. Second, a joint objection has been filed by The Dugaboy Trust (“Dugaboy”) and the Get Good Trust (“Get Good”). The Dugaboy Trust was created to manage the assets of Mr. Dondero and his family and owns a 0.1866% limited partnership interest in the Debtor. *See* Disclosure Statement at 7, n.3. The Bankruptcy Court is not clear what economic interest the Get Good Trust has, but it likewise seems to be related to Mr. Dondero. Get Good

filed three proofs of claim relating to a pending federal tax audit of the Debtor's 2008 return, which the Debtor believes arise from Get Good's equity security interests and are subject to subordination as set forth in its Confirmation Brief. Dugaboy filed three claims against the Debtor: (a) an administrative claim relating to the Debtor's alleged postpetition management of Multi-Strat Credit Fund, L.P., (b) a prepetition claim against a subsidiary of the Debtor for which it seeks to pierce the corporate veil, each of which the Debtor maintains are frivolous in the Confirmation Brief, and (c) a claim arising from its equity security interest in the Debtor, which the Debtor asserts should be subordinated. Another group of objectors that has joined together in one objection is what the Bankruptcy Court will refer to as the "Highland Advisors and Funds." *See* Docket No. 1863. The Bankruptcy Court understands they assert disputed administrative expense claims against the estate that were filed shortly before the Confirmation Hearing on January 23, 2021 [Docket No. 1826], and during the Confirmation Hearing on February 3, 2021 [Docket No. 1888]. At the Confirmation Hearing, Mr. Post testified on behalf of the Highland Advisors and Funds that the Funds have independent board members that run the Funds, but the Bankruptcy Court was not convinced of their independence from Mr. Dondero because none of the so-called independent board members have ever testified before the Bankruptcy Court and all have been engaged with the Highland complex for many years. Notably, the Court questions Mr. Post's credibility because, after more than 12 years of service, he abruptly resigned from the Debtor in October 2020 at the exact same time that Mr. Dondero resigned at the Board of Directors' request, and he is currently employed by Mr. Dondero. Moreover, Dustin Norris, a witness in a prior proceeding (whose testimony was made part of the record at the Confirmation Hearing), recently